



**Republic v Kenei & 3 others (Criminal Case E005 of 2023)
[2023] KEHC 17999 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E005 OF 2023
RB NGETICH, J
MAY 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MATHEW KENEI 1ST ACCUSED

VINCENT YATICH 2ND ACCUSED

EVANS KIPKENEI 3RD ACCUSED

BLAKWEN KIPSANG 4TH ACCUSED

RULING

1. The accused persons have been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that on March 26, 2023 at Moloï village of Kapchomuso sub-location in Baringo Central within Baringo County the accused jointly with others not before court murdered Bruce Kipruto Komen.
2. On April 17, 2023, the charge and its full particulars were read over to the accused persons who all denied the charges and a plea of not guilty was entered. The accused persons through their advocate applied to be released on bond. The state counsel informed the court that the state was not opposed to the accused persons being released on bond. The court directed that a pre-bail report be prepared by the probation officer to assist the court in determining bond terms. The pre-bail reports for the accused persons were filed on May 3, 2023.

1st Accused Pre-bail Report

3. In respect to accused 1, his family is ready to stand surety for him and are ready to produce him in court whenever he is required.



4. The victim's family are totally opposed to the accused being released on bond. The deceased's parents state that they have been threatened by one Charles Chepkirwo a relative to accused A2 and the matter was reported at Kabarnet police station vide OB No 2124/04/23.
5. The family further state that there are other suspects within the community who are still at large and if the accused is released on bond he may interfere with or threatened the witnesses and they also have fears that the local administration may shield the accused because the chief says A2 is his Nyumba Kumi man and was falsely accused. That from the social inquiry conducted, it is noted that the accused and the victim are close relatives.
6. The local administration on their part have no objection to the accused being granted bond stating that the accused is well known in the community and he is not a flight risk.
7. The probation officer concludes by stating that both the accused and the victim's family are closely related and have taken different stand as to the application for bond and in view of this, he leaves the matter to the determination of the court based on the above facts.
8. In respect to the second accused, the family is of the accused is willing to stand surety for him and are ready to produce him in court whenever he is needed.
9. The victim's family are strongly opposed to the accused's application for bond on ground that they have been threatened by one Charles Chepkirwo a relative to one accused (Vincent Yatich) and the matter was reported at Kabarnet police station vide OB No 2124/04/23. They further state that there are other suspects within the community who are still at large and they believe that if the accused is released on bond he may interfere with or threatened the witnesses. They further believe that the local administration may shield the accused because they state that the chief is allegedly saying that the accused is his Nyumba Kumi man who was falsely accused. That from the social inquiry conducted, it is noted that the accused and the victim are close relatives.
10. The local administration on their part have no objection to the accused being granted bond stating that the accused is well known in the community and he is not a flight risk.
11. The probation officer concludes by stating that both the accused and the victim's family are closely related and have taken different stand as to the application, in view of this, he leaves the matter to the determination of the court based on the above facts.
12. In respect to A3, the family of the accused is willing to stand surety for him and are ready to produce him in court whenever he is needed.
13. The victim's family are strongly opposed to the accused application for bond for same reason given in respect to 1st and 2nd accused persons. Like the case of 1st and 2nd accused, the local administration are not opposed to A3 being released on bond.
14. The family of A4 are also willing to stand surety for him and are ready to produce him in court whenever he is needed. The victim's family are opposed to A4 being released on bond for the same reason as stated in respect to A1to A3

Determination

15. Right to bond for accused persons is provided under Article 49(1)(h) of the [Constitution](#) which provide that an accused person should be released on bond unless there are compelling reasons to deny bond.
16. And under Article 50(2) of the [Constitution](#), every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail



or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management; that accused persons should not be subject to the same rules and regulations as convicts.

17. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya provide circumstances that should be taken into consideration when making decision on bond as captured hereunder:-

- a the nature or seriousness of the offence;
- b the character, antecedents, associations and community ties of the accused person;
- c the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
- d the strength of the evidence of his having committed the offence;

2 A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

- a has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- b should be kept in custody for his own protection.

18. Under Bail and Bond Policy Guidelines, the general guideline provided Paragraph 4.9 is as follows: -

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

19. In view of the above, I have considered contents of the pre-bail report and in particular the views of the victim's family. They have stated that A2's relative has threatened the family. This is confirmed by report made to police OB no OB No 2124/04/23. There is no linkage of the threats to A1, A3 and A4. The person mentioned is related to A2 as per pre-bail report.

20. The state has not given indication as to whether there are other suspects still at large. From the foregoing no compelling reasons have been advanced to deny A1, A3 and A4 bond.

21. Final Orders*:

1. A1, A3 and A4 may each be released on bond of kshs 500,000 with one surety of a similar amount.
2. A2 to remain in custody and may renew bond application when circumstances change.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 31ST DAY OF MAY 2023.

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RACHEL NGETICH

JUDGE

In the presence of:



Mr Kemboi - Court Assistant.

Mr Chebii for Accused 1, Accused 2 & 3rd Accused.

Mr Chepkilot for 4th Accused.

Ms Ratemo for state Present.

