



**Republic v Langat (Criminal Case E005 of 2023)
[2023] KEHC 20409 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E005 OF 2023**

**RL KORIR, J
JUNE 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

CHARLES KIBET LANGAT ACCUSED

RULING

1. Charles Kibet Langat (accused) is charged with the offence of murder contrary to section 203 of the Penal Code. The particulars of the charge are that on the February 13, 2023 at about 2230 hours at Mulot Sunset Shopping Centre in Kiblabotwa location within Bomet county and with others not before court murdered Peter Kiprono Korir. He took plea on February 23, 2023, and pleaded not guilty to the charge. The accused thereafter prayed for bond.

2. Bail/bond is a constitutional right provided under article 49(1) (h) of the Constitution. The provision is clear that unless there is a compelling reason, an accused person ought to be released on bail, as a matter of right. It provides that:-

“An arrested person has the right - to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”

3. In the Bail and Bond Policy Guidelines at Paragraph 3.1 (a), it is recommended that:-

.....Every accused person shall be presumed innocent (article 50(2) of the Constitution).This is the primary rationale for the requirement of the Constitution that an arrested person has the right to be released on bail or bond.

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. For example, accused persons should not be subject to the same rules and regulations as convicts.....

4. Section 123A of the *Criminal Procedure Code*, chapter 75 of the Laws of Kenya, provides some of the considerations that the court may take into account when considering a bail/bond application. It stipulates as follows: -

- (1) Subject to article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstances and in particular—
 - (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.

5. Additionally, the Bail and Bond Policy Guidelines, at Paragraph 4.9 states that:-

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.....

6. Judicial authorities have consistently underscored that it is the duty of the prosecution to bring to the attention of the court any compelling reasons. In this case, the prosecution did not oppose the application by the accused to be released on bond but urged the court to give stiff terms. Thus the only issue is the determination of the terms upon which bond or bail can be considered.

7. I have considered the Probation Officer's Report dated March 14, 2023 and filed on the same day. The report indicates that the accused was the 2nd born child among 5 daughters and 5 sons and that his family had been evicted from the Mau escarpment and relocated to IDP camps in Narok county. That the accused dropped out of school at class 6 and worked as a herds boy.

8. The report stated that the accused's family did not object to his release on bond and that there were efforts to seek forgiveness from the deceased's family. The victim's family on the other hand stated that the accused's family had shown no commitment towards reconciliation and forgiveness. However, the report further stated that the victim's family did not object to the accused's release on bail but recommended that it was important to them that the accused's family seek forgiveness from them first.

9. According to the probation officer, the community did not object to the accused's release on bail as long as the two families remained peaceful. That the village elder categorically stated that the life and security of the accused and others would not be at risk upon his release.



10. It is salient to note that the report indicated that nobody had offered to stand surety for the accused. The report also indicated that the accused had no place of abode and his ability to raise bail was severely hampered as his family had been rendered homeless after the eviction.

11. I have taken into consideration all the aforestated factors. The primary purpose of bail/bond is the secure the accused's attendance at trial. In *R v Godfrey Madegwa & 6 others* (2016) eKLR, the court had this to say:-

“The primary purpose for bail is to secure the accused person's attendance to court to answer the charge at the specified time. I would therefore agree with Mr Karanja that the primary consideration before determining whether or not to give bail is whether the accused is likely to attend trial.”

12. In this case it has been brought to the attention of the court that the accused had no fixed abode as a result of eviction from the Mau Forest where his family had earlier settled. It has not been shown to me that he will fail to attend court from wherever he will be living at any particular time. To deny him bond on account of not having a fixed home as of now would be discriminatory. I therefore grant him bond on stringent terms that would ensure his attendance at trial.

13. The accused is released on bond on the following condition: -

- i. He shall execute a personal bond of Kshs 200,000/= and provide 2 sureties of similar amount.
- ii. He shall produce a letter from the local chief confirming his current place of abode.
- iii. He shall attend court whenever required.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF JUNE , 2023

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Mr. Njeru for the State, No appearance for Mr. Koske for the Accused and Siele (Court Assistant)

