



**Republic v Cherono (Criminal Case E017 of 2023)  
[2023] KEHC 24575 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE E017 OF 2023  
RL KORIR, J  
OCTOBER 31, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FAITH CHERONO ..... ACCUSED**

**RULING**

1. The Accused was charged with the offence of murder contrary to section 203 of the *Penal Code* as read with section 204 of the *Penal Code*. On 20th September 2023, the Accused pleaded not guilty to the charge. The Accused thereafter prayed for bond and the court ordered for the filing of a Pre Bail Report.

2. Bail and bond are constitutional rights provided under Article 49(1) (h) of the *Constitution*. The provision is clear that, unless there is some 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. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:-
  - (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. The Pre Bail Report was filed on 28th September 2023 and it stated that the Accused's parents were willing to have her back home and be under their care. That there was no indication that she would be a flight risk as her father who was very close to her could account for her movements at any time.
7. The Report further stated that there was no indication of the Accused being harmed upon her released on bond. That she would reside in her parent's home in Kongotik North which was distant from her matrimonial home in Mogoma where the offence occurred.
8. The learned counsel for the Accused, Mr. Leteipa submitted that the prayer for bond was premised on Article 49 (i) of the *Constitution*. That the Accused was not a flight risk and that there were no compelling reasons why she could not be released on bond.
9. Mr. Leteipa submitted that the Accused's father had undertaken to produce her in court. He further urged the court to consider the rights of the infant who accompanied its mother to remand.
10. Mr. Waweru, the learned Prosecution counsel submitted that he relied on the Pre Bail Report particularly the Victim Impact Statement.



11. I have considered the Probation Officer's Report dated 28th September 2023 and filed on the same day. The Report is favourable to the Accused as her family were willing to have her back in their home where they would care for the Accused and her children.
12. I have also considered the Victim Impact Statement contained in the Pre-Bail Report. The Report stated that the Accused matrimonial village of Magoma was quite a distance away from where her parents lived and where it was proposed that she would be housed for the duration of this trial. It is my finding that the Accused's husband would not be exposed to risk if the Accused was released on bond.
13. In the final analysis, there are no compelling reasons advanced by the Prosecution to deny the Accused bond.
14. In the end, I find that the Accused merits release on bond on the following terms: -
  - i. She shall execute a personal bond of Kshs. 300,000/= with one surety of similar amount.
  - ii. She shall attend court whenever required.
  - iii. She shall not impede the trial in any way.Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 31<sup>ST</sup> DAY OF OCTOBER, 2023.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of Mr. Njeru for the State, Mr. Mugumya holding brief Mr. Leteipa for the Accused and Siele (Court Assistant)

