



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Bore (Criminal Case E010 of 2023)
[2023] KEHC 25931 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E010 OF 2023
JK SERGON, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAAC KIPLANGAT BORE ACCUSED

RULING

1. Isaac Kiplangat Bore, the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). The Particulars of the information dated 2nd August, 2023, are that on 18th July, 2023 at Marumbasi Village, Sigowet Location, in Soin - Sigowet Sub - County within Kericho County, the accused murdered Benson Kipkurui Bore.
2. The accused person according to court records was arrested on 18th July, 2023 and arraigned in court on 19th July, 2023. The accused person was subjected to mental assessment on 2nd August, 2023 and was found to be of sound mind and fit to stand trial.
3. On 3rd October, 2023, the accused person took plea and pleaded not guilty to the charge of murder.
4. As per the court records, the prosecution requested for a pre-bail report. The court directed that a pre-bail report be prepared and filed by the county probation officer.
5. The county probation officer filed a pre-bail report, in the said report, it is noted that the accused owns a small kiosk which is run by his wife, moulds bricks that he sells to construction sites and possess masonry skills. The accused is willing to abide by the bond terms and conditions, he therefore would not jeopardize justice or interfere with the witnesses.
6. The deceased and the accused are brothers, however, the family was not opposed to the accused being released on bail, they stated that the accused herein did not pose any threat. The accused's immediate



family members and neighbours were willing and ready to post the requisite bond surety to secure his release.

7. The local administration stated that the accused has no history of criminality and he was described by the community as being industrious. In the probation report, it was noted that the accused has strong community ties and therefore the community was not opposed to the accused's release on bail.
8. The probation officer noted that his wife, family and neighbours were not opposed to the accused person being released on bail, they were ready to post the requisite surety for his release. The probation officer noted that the accused has a fixed abode, therefore not a flight risk and was a person with good community ties. The probation officer noted the sentiments by the area chief that the accused had no history of criminality. The Chief also said that the Accused is an entrepreneur.
9. The probation officer based on the findings of the social inquiry and the assessment of the home environment, found no compelling reasons to withhold the accused's release on bail and therefore recommended that this court grant the accused bail.
10. The right to bail is both constitutional and statutory, the accused person has a constitutional right to be released on reasonable bail terms unless there is a compelling reason not to grant the accused person bail.
11. The right to bail is entrenched in article 49 (1) (h) of the Constitution which states as follows:-

“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.”
12. As a constitutional right, its enjoyment can only be limited if exceptional circumstances are established. In interpreting the right to bail, section 123A of the Criminal Procedure Code CAP 75 Laws of Kenya sets the parameters for the grant of the right to bail 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.”



13. In *Republic v John Kabindi Karisa & 2 others* [2010] eKLR the court observed as follows;

“A murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released.”

The Constitution does not define the term “compelling reasons”. However, there are several High Court cases that have deconstructed the phrase “compelling reasons” in *Republic v Joktan Mayende & 4 Others* Bungoma High Court Criminal Case No. 55 of 2009, the court defined the term “compelling reasons” as follows:

“The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the constitution.”

In the case of *Republic v Francis Kimathi* [2017] eKLR, the court held that:

“... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution.”

14. In the instant matter, I have taken cognizance of the fact that the prosecution was not opposed to the application for bail and/or did not place before this court any compelling reason (s) to enable me deny the accused his constitutional and statutory right to bail and further that the pre-bail report is favourable. Accordingly, I grant the accused person a bond, therefore, he should be released upon signing a bond of Kshs. 200,000/= with one surety of similar amount.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 30TH DAY OF NOVEMBER, 2023

J. K. SERGON

JUDGE

In the presence of:

Kipkoech Yegon for Accused

