



REPUBLIC OF KENYA



**Republic v Kendagor & 2 others (Criminal Case E023 of 2023)
[2023] KEHC 26118 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E023 OF 2023
RB NGETICH, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

THOMAS KIPKORIR KENDAGOR 1ST ACCUSED

STEPHEN KIPROP NGETICH 2ND ACCUSED

KIMORON KABUTIEI KIBOGONG 3RD ACCUSED

RULING

1. The accused persons herein 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 being that on the 13th day of October, 2023 at Sesya Village, Morop Sub-location, Ewalel Location in Baringo central Sub- County within Baringo County the accused persons murdered Franklin Kibowen Kimosop.
2. On the 17th November, 2023, the charge and its full particulars were read over and explained to the accused persons who all denied the charge and a plea of not guilty was entered. The prosecution did not object the accused persons being released on bond. The court made an order that pre-bail report be availed to assist the court in determining bond terms. The pre- bail reports for each of the accused was filed on 22nd November, 2023.

1ST Accused Pre-bail Report

3. According to the report, the 1st accused schooled at Sesia Primary School upto standard eight but never sat for his KCPE due to his own personal will. After dropping out of school, he started working as a security officer at Total Security, Eldoret for a period of four years. He later relocated to Naivasha and worked at the same company for a period of four months; he returned home and stayed upto the year 2017 when he secured a job as a security officer at Bunare Security Firm where he worked for a period



of 18 months and left the job due to his wife's sickness. The accused 1 stayed without any employment for a while and stated doing casual jobs within the community. For the last three months he has been working as a watchman to Sessia primary school. He got married in the year 2016 and they are blessed with two children who are currently under the custody of their paternal grandparents due to his nature of work and the fact that his wife went back to her parents.

4. The accused prays for favorable bond terms to enable him continue with his job and assist his parents in taking care of his children. At the point of interview, he said his brother who works as a Priest will stand surety for him or his father will produce title deed as surety. He is willing to abide by the conditions the court will set for him.
5. The victim's elder sister and the mother are all opposed to the accused person being released on bond; they are still bitter over the death of the deceased and are not ready to see him since they are relatives. Efforts to find the father to the deceased were futile and it's alleged that he is hiding somewhere. The accused and the deceased's father are brothers.
6. The accused's second born brother stated that he is willing to avail land title deed as security to enable his brother be admitted to bond added that he will ensure the accused person abides by the conditions set by the court. The brother is aware that the accused is not wanted in the community at the moment and he is willing to facilitate relocation of accused 1 during pendency of this case.
7. The local administration, village elder and DCI Kabarnet representatives were available for interview; the village elder stated that the accused 1 and the deceased are related. He noted that there is little hostility between the two families. He does not oppose the accused person being released on bond but if released the accused person should stay far from his homestead until the level of bitterness has reduced. The local administration echoed the same sentiments by the village elder that they be granted bond and they should be far for a while for hostility towards the to subside. The DCI's representative noted that the accused person faces no danger at the community; it's just the victim's family who are expressing lots of bitterness and anger towards him.
8. The Probation Officer states that the accused person is the relative to the deceased. From the social inquiry they find that he is not flight risk, he has found someone who will stand surety for him, he is well known at the community level and he cannot interfere with the witnesses however the community prefer him to relocate to another place for some time to allow bitterness from the victim's family to reduce. They do recommend that the Accused 1 be admitted into bond at a later period to enable the victim family have some level of acceptance towards him however this is subject to courts discretions.

2nd accused person pre-bail report

9. The 2nd accused person had a formal education up to college level, he has a certificate in business statistics and never completed his Diploma due to lack of funds to proceed with his education. He attended Sabor Secondary School, did his KCSE in the year 2010 and managed to score a mean grade of D. He married in the year 2016 and they are blessed with two children. For a living the accused person does mason work and carpentry work.
10. Accused 2 prays for favorable bond terms to enable him continue with his job and taking care of his young family. At the time of interview, Accused 2 was able to identify the elder brother who works at Baringo County Government as a surety.
11. The victim's elder sister and the mother were all opposed the accused person being released on bond starting that they are still bitter over what he did to the deceased and they are not ready to see him since



they are neighbors. Efforts to find the father to the deceased were futile and it's alleged that he is hiding somewhere within Kabarnet.

12. Accused 2's elder brother is willing to provide his pay slip to enable his brother be released on bond. He indicated that he will ensure the Accused 2 abides by the conditions set by the court. He indicated that he understands that at community level, they do not want to see him and he is willing to find a place where he will reside as he attends court.
13. The local administration, village elder and DCI Kabarnet representatives were available for interview; the village elder indicated that Accused 2 and the deceased are neighbors. He stated that there is little hostility between the two families. He does not oppose Accused 2 being released on bond but say if released, he should stay far from his homestead until the level of bitterness has reduced. The local administration echoed the same sentiments by the village elder that they be granted bond and they should be far for a while to enable the victim family reduce their anger towards them. The DCI representative indicated that the accused person faces no danger at the community; it's just the victim's family who are expressing lots of bitterness and anger towards him.
14. The Probation Officers states in the report that the Accused 2 is a neighbor to the deceased. From the social inquiry, they find that he is not flight risk, he has found someone who will stand surety for him, he is well known at the community level and he cannot interfere with the witnesses; however, the community prefer him to relocate to another place for some time to enable the victim family to reduce their level of bitterness. They do recommend that the Accused 2 be released on bond at a later period to enable the victim family have some level of acceptance towards him. However, this is subject to courts discretions.

3rd accused pre-bail report

15. The 3rd accused is a graduate of Great Lake University; he graduated in the year 2021 but he has not collected his certificate due to school fee arrears. He attended several Schools due to lack of fees. He was first admitted at Kabarnet High School, later Marigat Day and lastly Kipkaech Secondary School. He sat for KCSE in the year 2017 and managed to score a mean Grade of C. The accused is married with one child. At the community level the accused holds several key positions such as the chairperson to Turipkel bore hole, Secretary to Morop Taramhas Conservancy and active member of Nyumba Kumi Sesia area.
16. Accused 3 prays for bond to enable him take care of his young family and his siblings since his father is always drunk. He has responsibility of paying school fees for his young brother. He has been able to identify his father and his cousins as sureties.
17. The victim's mother and elder daughter were available for interview; they were very emotional and they are opposed Accused 3 being admitted into bond. Their main reason of opposing bond is that they do not want to see them at the moment.
18. Accused 3's father undertakes to ensure that his son abide by the conditions of bond set the honorable court and has a title deed that he will give to court as security. He added that at the moment he is aware that his son is not wanted at community level, he indicated that he will relocate his son far away from the community. Accused 3's wife prayed for the accused be released on bond so that he can assist him with family responsibilities.
19. The local administration, village elder and the DCI representative from Kabarnet station were available for interview. The village elder indicated that the accused is well known to them as one of Nyumba Kumi leader; he never opposed the accused be admitted into bond terms provided his family relocates



him until the level of bitterness from the victim family has reduced. The local administration never opposed him being admitted into bond provided he will relocate from the community. The DCI representative noted that during the time of investigation, community members described Accused 3 as a tough disciplinarian when one does a mistake at community level. He never opposed the accused person being admitted into bond terms.

20. The probation officer states in his report that the accused person is a neighbor to the deceased. From the social inquiry they find that he is not flight risk, he has found someone who will stand surety for him, he is well known at the community level and he cannot interfere with the witnesses; however, the community prefer him to relocate to another place for some time to enable the victim's family to reduce their level of bitterness. They do recommend that Accused 3 be admitted into bond at a later period to enable the victim's family have some level of acceptance towards him. However, this is subject to courts discretion.

Determination

21. Bail is a constitutional right of every citizen. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case.
22. Further Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, provide 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.
23. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 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.”
24. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:



- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
 - (b) The strength of the prosecution case.
 - (c) The character and antecedents of the accused person.
 - (d) The failure of the accused person to observe bail or bond terms.
 - (e) The likelihood of interfering with witnesses.
 - (f) The need to protect the victim or victims of the crime.
 - (g) The relationship between the accused person and the potential witnesses.
 - (h) The best interest of child offenders.
 - (i) The accused person is a flight risk.
 - (j) Whether the accused person is gainfully employed.
 - (k) Public order, peace and security.
 - (l) Protection of the accused persons.
25. The overarching objective of bail is to ensure that an accused person attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.
26. From the views of the local administration, the community and family of the victim, the accused persons are not a flight risk and they are all able to get sureties who are willing to relocate each of them from community to allow the emotions of the victim's family to cool down. From sentiments by the DCI, it is only the family of the victim who are bitter and hostile towards the accused persons herein. In view of the fact that the families of the accused persons are ready and willing to relocate them, I am inclined to release the accused persons on bond.

27. Final orders

- 1. Each accused released on bond of kshs 500,000 with one surety of similar amount.
- 2. The accused's sureties to undertake to relocate the accused persons from the locality where the incident herein occurred.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET

THIS 30TH DAY OF NOVEMBER, 2023.

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RACHEL NGETICH
JUDGE

In the presence of:
 Mr. Mongare for State.
 Ms Kogo for accused's.



Accused 1 – Present.

Accused 2 – Present.

Accused 3 – Present.

