



**Republic v Kiptoo (Criminal Case E003 of 2023)  
[2023] KEHC 25657 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25657 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE E003 OF 2023  
RB NGETICH, J  
NOVEMBER 23, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN KIPTOO ..... ACCUSED**

**RULING**

1. The accused Brian Kiptoo has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the charge being that on the 3<sup>rd</sup> day of August, 2023 at Kabogor Village, within Mogotio Sub- County at Baringo County, the accused unlawfully killed Simon Kiptoo Komen.
2. The charge and its full particulars were read over and explained to accused on the 19<sup>th</sup> October, 2023. He denied the charge and a plea of not guilty was entered. The court then made an order that a pre-bail report be availed to court to assist the court in determining bond terms.
3. The Pre-bail report was filed on the 14<sup>th</sup> November, 2023. From the report, the accused was born in 1997. He sat for his KCPE in 2014 where he scored 247 points but did not continue with education due to financial challenges. He engaged in farming up to the time of his arrest. He is single with no responsibilities.
4. The family members interviewed indicated that, the victim was a step brother to the accused and had been threatening to kill family members a matter that was reported to Eming police station vide OB. NO 06130/1212022 dated 30/12/2022 but no action was taken despite the family pleas on the same. People interviewed stated that the accused is of good character who never showed any unbecoming behavior.
5. From the report there is fear that accused may be attacked by family of deceased; they are still very bitter with the accused for having killed their sole bread winner. The community’s view is that the matter is



still very fresh in people's mind and would trigger their emotions; that accused's life may be in danger having in mind the fact that the victim's children are now on long holiday. The area administrator stated that the accused was not a flight risk in the community. That he is a trustworthy person who could not fail to attend to court when he is required, however his release may prompt some emotions which may lead to retaliation.

## Determination

6. 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. 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.”
7. 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.
8. 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.”
9. 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.
10. The overarching objective of bail is to ensure the accused 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.
11. From the views of the local administration, the community and family of the victim, the accused is not a flight risk and he is able to get a surety who will ensure that he attends court when required. The challenge is that, the family of the victim are still very bitter and there is fear that the children of the deceased may retaliate. The life of the accused will be at risk if released. Despite the fact that the accused caused the loss of deceased's life herein, it would be in the interest of justice to protect him from harm that may be occasioned to him as a result of animosity and anger resulting from his action which cut short the life of the deceased herein. Life is sacred and this court is enjoined by the constitution to ensure protection of life of all Kenyans.
12. From the foregoing, I find that it is not appropriate to release the accused on bond at this stage of trial.
13. Final Orders: -
1. I hereby decline to released accused on bond.
  2. Accused may apply for bond later when circumstances change.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 23<sup>RD</sup> OF NOVEMBER 2023.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Accused present.

Mr. Abwajo for State.

