



**Republic v Ngeno (Criminal Case E028 of 2023)
[2023] KEHC 27085 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E028 OF 2023
JK SERGON, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

VICTOR CHERUIYOT NGENO ACCUSED

RULING

1. Victor Cheruiyot Ngeno the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). Particulars of the information dated 8th December, 2023, are that on 7th August, 2022 at Cheborgei Trading Centre in Bureti Sub - County within Kericho County, the accused murdered Edmond Kipngetich Koech. The accused person pleaded not guilty to the offence. The Accused has now applied to this court to be released on bond pending trial.
2. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the Accused Person's Application for bond for the reason that the Accused is a flight risk. He further stated that the Accused Person has been on the run since the month of August, 2022 after he committed the offence.
3. Mr. Kiprono, Learned Advocate for Accused urged this Court to reject the assertion by Learned Prosecution Counsel that the Applicant is a flight risk. The Learned Advocate stated the accused has a fixed abode. He pointed out the Accused has never been on the run.
4. The County Probation Officer was directed to file a Pre-bail Probation Report within 7 days from the date of the directive.
5. The county probation officer filed a pre bail report, in the said report, it is noted that the accused prays to be granted bond however his family members are reluctant to provide information regarding the same. The deceased's family members are bitter towards the accused. They pray that the accused should



- not be released on bond since he had gone missing from the community immediately after the incident happened. They suspect that the accused may flee the village and jeopardise justice.
6. The probation officer noted that the accused has a fixed abode at home. Having been implicated in the commission of the incident, he went missing from the community for a while before his return and subsequent arrest. The probation officer therefore deemed the accused as a flight risk.
 7. The probation officer noted that the accused's family members were reluctant to share information regarding the release of the accused. This leaves the court with no clear means of releasing the accused on bond since the willingness of the accused's family and relatives play an important role in ensuring the safety and the accused if released on bond. The probation officer therefore recommended that the court withhold the release of the accused on bond until his family members who play a crucial role in advising on the accused's safety and how he will attend court as required furnish the court with information regarding his release on bond.
 8. 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.
 9. 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."
 10. 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.
 11. 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."
 12. In the instant matter, I have taken cognizance of the fact that the prosecution is opposed to the application for bail and that the pre bail report is unfavourable, I find that there are compelling reasons not to admit the accused to bail. I hereby dismiss the application for bail, the applicant to remain in custody during trial. The Application for bail to be reviewed after a period of 3 months.



DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF DECEMBER, 2023.

J. K. SERGON

JUDGE

In the presence of:

Kiprono holding brief for Yegon for Accused

Karanja for the State

