

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. E002 OF 2022

REPUBLIC..... PROSECUTOR

VERSUS

JOHN CHERUIYOT KIRUL.....ACCUSED

RULING

1. This ruling is in respect of the accused's application to be released on bail pending trial. The accused is facing trial for the murder of one Gideon Kiprono Yegon whom he is alleged to have murdered on 29th December, 2021 at Chebunyo Location in Chepalungu Sub-County within Bomet County.

2. In urging the application, defence counsel Mr. Kipngetch submitted that bond was a right available to any accused person. Counsel referred to the Bail assessment report which he said was neither authentic nor authoritative. On the suggestion that the victim's family had issued threats against the accused if released, Counsel dismissed the report stating that the victim's family must keep the peace as the accused had a right to security.

3. Mr. Muriithi for the State urged the court not to grant the accused bail for his own safety. Counsel submitted that the court had a duty to consider the issues raised in the probation officer's report including the fact that no one was willing to stand surety for the accused and the recommendation that bond be deferred to a later date.

4. In a rejoinder defence counsel urged the court to balance the rights of the accused and those of the victims.

5. I have considered the application. From the onset I must state that the probation officer's Bail assessment report is not binding on the court as the grant or denial of bail is at the sole discretion of the court.

6. The report however may assist the court in appreciating the circumstances of the accused as well as any relevant situation on the ground. No doubt security for all persons is the mandate of the state and therefore submission by the Prosecution Counsel that the security of the accused was not guaranteed has no legs to stand on and amounts to an acknowledgment of abdication of responsibility by the State. However, it must be acknowledged that security lapses sometimes do occur as it did when the deceased was killed.

7. In this case the court must acknowledge that both the accused and his family were in a better position to appreciate the circumstances on the ground. The social inquiry report states that the family of the accused were apprehensive that the environment was still quite hostile and were apprehensive of retaliation if the accused was released.

8. Having taken all factors into consideration, I exercise discretion not to grant the accused bail at this stage. He shall be at liberty to renew his application at a later stage.

9. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 24TH DAY OF MARCH, 2022

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Muriithi for the State, Ms. Chepkemai holding brief Mr. Kipngetch for the Accused and Kiprotich (Court Assistant)