



**Republic v Ngeno (Criminal Case 20 of 2020) [2022] KEHC 11137 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11137 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 20 OF 2020**

**RL KORIR, J**

**JULY 29, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**OBADIAH KIPKORIR NGENO ..... ACCUSED**

**RULING**

1. The accused Obadiah Kipkorir Ngeno is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (CAP 63) laws of Kenya. The particulars of the offence are that on 8<sup>th</sup> day of August, 2020 at Mbalek area in Bomet Central Sub-County within Bomet County jointly with another not before the court murdered Dominic Bor. In a Ruling dated 25<sup>th</sup> February 2021, this court denied the Accused bail.
2. In an Application dated 28<sup>th</sup> April 2021, the Accused through his counsel applied for the Review of the Bond Ruling was delivered on 25<sup>th</sup> February 2021. In a Ruling dated 26<sup>th</sup> July 2021, this court granted the Accused bail on the following conditions: -
  - I. That he shall provide a personal bond of Kshs 300,000 and provide 2 sureties of similar amounts each.
  - II. That he shall not interfere with witnesses in any way.
  - III. That he shall attend court whenever required and shall not impede the trial in any way.
3. This matter was scheduled for hearing on 5<sup>th</sup> July 2022 but the Accused was absent. The two sureties in court explained his absence by stating that he was in training at Kiganjo Police Training College. As a result, this court cancelled the Accused's bond terms and further directed that the Accused be availed to continue with his trial.
4. On 18<sup>th</sup> July 2022, Counsel for the Accused applied to have the bond terms reinstated because the Accused was unable to attend court as he was already undertaking police training. She also prayed that



- the sureties be maintained. Counsel prayed for a hearing date in January 2023 when the Accused would have completed his training.
5. The Prosecution responded by stating that it was not clear how the Accused was cleared and recruited. They however left the decision to the court subject to the Accused and sureties attending court as and when required.
  6. The sole issue for determination would be whether the bond terms given to the Accused ought to be reinstated.
  7. In the case of *Ng'ang'a Vs. Rep* (1985) KLR 451 Chesoni, J, (as he then was) set out the grounds upon which bail may be refused as follows: -
    - “(a) In principle, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:
      - (i) The accused will fail to turn up at his trial or to surrender to custody;
      - (ii) The accused may commit further offences; or
      - (iii) He will obstruct the course of justice.
    - (b) The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider:
      - (i) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;
      - (ii) The strength of the prosecution case;
      - (iii) The character and antecedents of the accused;
      - (iv) The likelihood of the accused interfering with prosecution witnesses”.
  8. The Accused is charged with the serious offence of murder. I however agree with his counsel that the accused enjoys the presumption of innocence under *the Constitution*. Denial of bail however does not in any way detract from the presumption. It is trite as shown above that the purpose of bail is to secure an accused's attendance at trial. In this case, the Accused was granted bond. The bond was conditional inter alia upon him attending court whenever required and not impeding the trial in any way.
  9. The Accused was required in court on 4<sup>th</sup> and 5<sup>th</sup> July, 2022 when his case was scheduled for trial. He failed to attend court. His engagement in the police training has clearly impeded his trial. It is clear that if the bond is reinstated he shall not be in a position to attend his trial. The Accused has requested the court to shift his trial to January 2023. This request cannot be granted as it will be tantamount to altering the court's diary to accommodate the Accused's personal interests. As this court rightly put it, its diary shall not be altered to accommodate the Accused's personal interests. It would be setting a dangerous precedent to grant accused persons the right to dictate when their trials should proceed.
  10. This court has to balance the interest of both the Accused and the deceased's family who are the victims of the offence. Justice applies to both parties. It would be a great injustice to subject the victim's family



to wait for an additional 6 months for the trial to proceed. I agree with my colleague in the case of *Republic Vs. Samuel Letarum Sericho* (2017) eKLR, where Ogola J stated that: -

“ This court is the bastion of justice for both parties”.

11. In the final analysis, the application for re-instatement of the bond is declined. The sureties are discharged.
12. Parties are directed to take the next trial dates.

**Orders accordingly.**

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29<sup>TH</sup> DAY OF JULY, 2022.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Mr. Muriithi for the State, Ms. Chirchir for Accused and Kiprotich (Court Assistant).**

