



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Langat (Criminal Case E017 of 2022)
[2022] KEHC 15579 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E017 OF 2022
RL KORIR, J
NOVEMBER 22, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

WELDON KIPKOECH LANGAT ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge were that on the 7th day of July 2022 at Siongirio Location in Chepalungu Sub County within Bomet County murdered Faith Cheronono.
2. On July 21, 2022, the accused pleaded not guilty to the charge of murder.
3. Counsel for the accused prayed that the accused be released on bond as he was entitled under article 49 (1) of the *Constitution*. She further submitted that there was an unfavourable pre bail report but she asked the court to exercise its discretion and grant the bond as the accused would attend court.
4. The prosecution opposed the application by stating that though the pre bail report was not binding to the court, it acted as a guide. The prosecution submitted that the accused's own family was not ready to stand surety for him and that they had expressed fear for the accused's life owing to the volatile situation on the ground arising out of the offence.
5. Article 49(1)(h) states that an accused 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.



6. Case law setting out the principles that guide a trial court when considering whether or not to grant bail to an accused person abound. In the case of *Ng'ang'a vs Republic* 1985 KLR 451 Chesoni J, (as he then was) held as follows:-

“1. The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors:

(a) In principle, because for 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.”

7. Where an application for bail has been made and the trial court under the circumstances is unable to make a determination due to inadequacy of information, it is at liberty to seek more information from the accused or any other necessary party in order to arrive at an informed decision. This may be done through further inquiries as outlined in the Judiciary Bail and Bond Guidelines which states at paragraph 4.26 (c) c that:-

“The court may request for a bail report where it considers that it does not have sufficient information to make a fair and appropriate bail decision, including the following instances – (c) Where the accused person has been granted bail but fails to meet bail terms and seeks review of those terms.”

8. In this case, the court called for a pre bail report was filed on October 4, 2022. It stated that the victim's family was opposed to the accused being released until both families (the accused's and the victim's) had concluded reconciliation. They stated that the incident was fresh in their minds for them to consent to the accused's release. On the other hand, the report stated that no one from the accused's family was ready to stand surety for him.



9. The report stated that the village elders and the community were opposed to the victim being released on bail and further that the local administration had reservations against the accused's release due to a hostile environment as both families lived in the same location.
10. The Judiciary Bail and Bond Policy Guidelines of 2015 have provided parameters to assist the court in exercising discretion judiciously. With respect to bail and bond, they require that the court in granting bail should consider the seriousness of the offence, the strength of the case, interference of witnesses, failure of the accused to attend or where the accused is charged with another case, the need to protect the victim(s), the security and safety of the accused, the likelihood of absconding from the jurisdiction of the court and other factors which must be weighed by the court in the interest of justice. Such an exercise of discretion requires a wholistic approach and the court must, in close circumspection, take to account the circumstances of the case and the accused person individually.
11. In the present case, the community at large and the victim's family were not receptive to the idea of the accused being released on bond. I am alive to the fact that the accused's rights must be balanced against those of the public. I am persuaded by the case of *Republic vs Danford Kabage Mwangi* [2016] eKLR where Mativo J (as he then was) observed as follows:-

“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Constitution and courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.....”
12. Of particular importance is the fact that the accused's own family are not willing to stand surety for him. As noted earlier, the primary purpose of bail/bond is to secure the attendance of the accused at trial. The attendance of the accused for future court dates cannot be guaranteed where no surety steps in guarantee the accused's attendance.
13. I am mindful that the accused is charged with the severe offence of murder and the chances of absconding will be higher than when charged with a lesser offence. I agree with the sentiments of Mbogholi Msagha, J (as he then was) in Criminal Application No 319 of 2002 *Priscilla Jemutai Kolonge vs Republic* (unreported) where he held as follows:

“However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.”
14. In the final analysis and while taking a wholistic approach, it is my finding that the circumstances of this case militate the release of the accused on bail. I am persuaded not to grant him bail at this stage.
15. The application for bond is therefore denied. The accused is at liberty to renew his application at a later stage.
16. Orders Accordingly.



RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 22ND DAY OF NOVEMBER, 2022.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Ms. Chemutai holding brief for Mr. Koske for the Accused, Mr. Waweru holding brief for Mr. Njeru for the State and Kiprotich (Court Assistant).

