



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO. E008 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID KIPKEMOI KIRINYET *alias* KIPKOMBICH.....ACCUSED**

**RULING**

1. David Kipkemoi Kirinyet alias Kipkombich (Accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He is alleged to have murdered Joseph Kipkemoi Sitienei on the 16<sup>th</sup> day of December 2020 at 0300 hours at Busieni village in Chemaner Location within Bomet County.

2. The Accused took plea on 9<sup>th</sup> February 2021 and denied the charge. The court consequently directed the Probation Officer to file a pre-bail assessment report. The same was filed on 13<sup>th</sup> April 2021.

3. At the pre-trial session on 21<sup>st</sup> April 2021, Mr. Leteipa defence counsel made an application for the Accused to be released on bond. In urging the application, counsel submitted that the Accused was not a flight risk and was the sole breadwinner of his young family. Counsel further submitted that there were no compelling reasons to deny the Accused bond.

4. Mr. Wawire, Prosecution Counsel opposed the application. In brief submissions, Counsel urged the court to consider the safety of the Accused who was said to have been rescued from a lynch mob. He urged the court to consider the views of the community as captured in the pre-bail information report.

5. I have considered the application. It is brought under Article 49 (i) (h) of the Constitution which gives every suspect or accused person the right to bail unless there were compelling reasons. The only issue before me therefore is to consider whether there are compelling reasons for the court to deny the Accused bond.

6. Section 123 of the Criminal Procedure Code, Cap 75 sets out the circumstances for the grant of bond. Further the Judiciary Bail and Bond Policy Guidelines (2015) sets out the criteria against which the court can consider a bail or bond application. These are listed as:-

***(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.***

7. In the present case, the antecedents of the Accused have been stated in the Bail assessment Report. The report states that the Accused has in the past attacked and cut the local Chief with a panga an offence for which he was sentenced to serve 6 months imprisonment. The report also states that the Accused was rescued by the police from a lynch mob after the incident raising the possibility of his safety being in jeopardy if released.

8. The Report further casts the Accused as an aggressive person. It also states that the family was reluctant to have him released due to the hostility on the ground. They fear that his release may jeopardise their own safety.

9. I have considered the application and the antecedents of the Accused. I am disinclined to grant the Accused bond at this stage. He shall be

at liberty to renew his application at a later stage.

10. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 29TH DAY OF APRIL, 2021.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Accused, Defence Counsel Mr. Leteipa, Mr. Mureithi for the DPP, and Kiprotich (Court Assistant).**