

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. E021 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

MIRON KIPNGETICH.....1ST ACCUSED

IVYNE CHEPKOECH.....2ND ACCUSED

RULING

1. Miron Kipngetich and Ivyne Chepkoech (1st and 2nd Accused respectively) are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on the 14th October 2021 at Siongiroi location in Chepalungu Sub-County within Bomet County jointly murdered Anastacia Chepchumba.

2. They took plea on 9th November 2021 and denied the charges. Their learned defence Counsel Mr. Kenduiwo made an application for a bail assessment report in respect of each Accused.

3. At the pre-trial session held on 24th November 2021, Counsel made an application for the Accused to be released on bail. In urging the report, Counsel adverted that the Bail Assessment reports were not favourable to the Accused. He however urged the court to ignore the reports and uphold the trite law that the Accused were innocent until proven guilty.

4. For the 1st Accused, Counsel submitted that he was not a flight risk and that he came from a humble background. For the 2nd Accused, Counsel submitted that she was also not a flight risk and came from a humble background. Finally, Counsel submitted that there were no compelling reasons to deny the Accused bond.

5. The application was opposed by the State on grounds that there were compelling reasons to deny them bond. Prosecution Counsel Mr. Murithi submitted that the 1st Accused abused drugs and was a flight risk. That because of his antecedents none of his family members was willing to stand surety for him and that his safety was not guaranteed. For the 2nd Accused, Counsel submitted that she was a flight risk as the probation report had demonstrated that she had the antecedent of running away from her home. That the community was hostile to the prospect of her being released on bond.

6. There is no contestation that an accused person is entitled to bail under Article 49 (i) h of the Constitution. The only fetter is the existence of compelling reasons. It is also trite that any accused person enjoys the constitutional presumption of innocence until proven guilty (See **R. V. Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008 [2010] eKLR**)

7. I have considered the application, the respective submissions and the social inquiry reports. The social inquiry report in respect of the 1st Accused states that he abused drugs and generally led a reckless life. The family members are said to have termed him a flight risk since he would make regular disappearances from his place of abode where he lived with his grandmother. For the 2nd Accused the report states that she had the antecedent of having run away from school and frequently disappeared from home. That she abused alcohol and drugs which led to the abuse of her child leading to the present charge. According to the report none of the family members were willing to stand surety for her.

8. It is clear from the above that there exist a compelling reason not to release the two Accused. Given their antecedents I am persuaded that they were likely to abscond trial. It is to be remembered that the primary purpose of bail is to secure the Accused's attendance at trial. Their respective applications are thus denied. They will remain in custody pending their trial.

9. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 16TH DAY OF DECEMBER, 2021

.....

R. LAGAT-KORIR

JUDGE

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