



**Republic v Chebon (Criminal Case E010 of 2024)  
[2025] KEHC 1925 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1925 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E010 OF 2024  
RB NGETICH, J  
FEBRUARY 6, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**LUKA CHEBON ..... ACCUSED**

**RULING**

1. The accused Luka Chebon has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused person on the 1<sup>st</sup> day of November, 2024 at Munanda Village, Kaptorokwo Sub -location in Baringo Central Sub-County within Baringo County, murdered David Sergon Kiprop.
2. The accused denied the charge and the prosecution did not oppose the accused being released on bond but the court called for a pre-bail report to be filed to assist the court in determining bond terms.

**Prebail Report**

3. From the report, the accused dropped out of school in class due to lack of support from his parents and his own will. When he attained the age of 18, he started working as a conductor at the Kabarnet main stage where he worked for around 11 years. He later became a driver after obtaining driving licence. He is single now though he has married twice. He had one child from each marriage. The accused person has no history of being admitted on bond previously. He prays for bond although he cannot identify a surety
4. The report indicate that the victim’s family are still bitter and are not ready to receive him back home. The two families live close together and are part of one clan. From the report, there is hostility towards the accused person within the community.



5. The local administration opposed accused being released on bond at this stage of trial on ground that the family of the accused and the family of the victim are close and at the moment there is animosity between the two families as demonstrated during fund raiser done for the victim's children recently. He is of the view that the accused stay in custody until such a time that the hostility towards him and his family subside. He added that the accused was arrested by members of the public and subjected to mob justice before the local administration rescued him and if released on bond, they cannot guarantee his safety given the hostility towards him.

### Determination

6. Bail is a constitutional right of every citizen. Article 49(1)(h) of *the Constitution* is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“An arrested 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.”

7. Moreover, by dint of Article 50(2) of *the Constitution*, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.

8. Accordingly, Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, stipulates that:

- (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
- i. The nature or seriousness of the offence;
  - ii. The character, antecedents, associations and community ties of the accused person;
  - iii. The defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
  - iv. The strength of the evidence of his having committed the offence;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody; should be kept in custody for his own protection.

9. And, in the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of *the Constitution* of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

10. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:



- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
  - b. The strength of the prosecution case.
  - c. The character and antecedents of the accused person.
  - d. The failure of the accused person to observe bail or bond terms.
  - e. The likelihood of interfering with witnesses.
  - f. The need to protect the victim or victims of the crime.
  - g. The relationship between the accused person and the potential witnesses.
  - h. The best interest of child offenders.
  - i. The accused person is a flight risk.
  - j. Whether the accused person is gainfully employed.
  - k. Public order, peace and security.
  - l. Protection of the accused persons.
11. The accused person faces a serious charge of murder. However, he is still deemed innocent until proven guilty. Under Article 49 (1) (h) of *the Constitution*, he is entitled to bail pending trial unless there are compelling circumstances. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
  12. The overarching objective of bail is to ensure the accused attends his trial. Relevant matters to be considered by the court include the nature of the charge, the likely sentence, previous criminal records, the views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.
  13. From prebail report, there is still hostility on the ground toward accused. Further, from the local administration's sentiments, the accused was arrested by members of public and subjected to mob justice. He says they cannot guarantee accused's safety if released. In view of the above, it would not be safe to release accused while bitterness towards him is still high as his safety will not be guaranteed; releasing accused now will endanger his own life. It would therefore be in the interest of justice for accused to remain in custody for now. This court may reconsider his bond application if circumstances change.
  14. Final Orders:-
    1. Accused is denied bond.
    2. Accused may renew bond application at a later date when circumstances change.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:



\* Elvis/Momanyi – Court Assistants.

\* Ms. Bartilol for State.

\* Accused present.

\* No appearance for accused.

