



REPUBLIC OF KENYA



**Republic v Kipsania (Criminal Case E012 of 2024)
[2025] KEHC 2109 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E012 OF 2024
RB NGETICH, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DENNIS KIPSANG KIPSANIA ACCUSED

RULING

Ruling on bond

1. The accused Dennis Kipsang Kipsania 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 7th day of November, 2024 at Kabiyewo Village of Kasisit in Baringo North Sub- County within Baringo County, murdered Sharon Jelagat.
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 the bond. Prebail report was duly filed as directed.

Prebail Report

3. From the report, the accused sat for KCSE examination in the year 2021 and scored D+. He is married with one child who is under the care of her paternal grandmother. His mother prayed for release of accused so that he may restart his life afresh and continue taking care of his baby. The uncle indicated that the accused's life within the community is at risk as the community is still very bitter following the incident and as a family, they have not identified a surety for the accused. From the inquiry, the accused person has no criminal history; he understands the gravity of the offence and prays for favorable bond terms



4. The victim was accused's wife aged 24 years at the time of her death. The victim's father is opposed to the accused person being admitted into bond; the victim's family are still very bitter for loss of their kin and are of the view that he be held in custody for his own security.
5. The local administration stated that the accused's life will be endangered if released as the victim's family and the community are still bitter over the incident but will not be opposed to bond if accused has alternative place of abode.

Determination

6. Under Article 49(1)(h) of *the Constitution*, an accused person, be he a citizen or foreigner has a right to be released on bail, as a matter of right, pending the hearing and determination of his/her case unless there are compelling reasons.
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 has been charged with a serious offence of manslaughter. He is however 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, the victim's family and the community are still bitter towards accused over the death of the deceased herein. This has been confirmed by the local administration who state that the accused's life will be in danger if released on bond. He added that if accused had alternative place of abode, he would not be opposed to his release on bond. The accused's uncle confirm that the victim's family and community are still bitter and releasing accused on bond may not be safe for him. The uncle did not indicate any alternative place of abode for accused. In view of the above, there is compelling reason to deny accused bond; reason being accused's own protection. I therefore decline to release accused on bond at this stage of trial. He may renew bond application when circumstances change.
14. Final Orders: -
1. Accused denied bond.
 2. Accused may reapply to be released on bond when circumstances change.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 6TH DAY OF FEBRUARY 2025.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistants.

Ms. Bartilol for State.



Mr. Mwaita for accused.

Accused present.

