



REPUBLIC OF KENYA



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

**Republic v Cheboi (Criminal Case E003 of 2025)
[2025] KEHC 5915 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E003 OF 2025**

RB NGETICH, J

MAY 7, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL CHEBOI ACCUSED

RULING

1. The accused Michael Cheboi 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 29th day of January, 2025 at Nawe village, Yatya Location, Baringo North within Baringo County, murdered one Margaret Toyoi Chelimo.
2. The accused denied the charge and the prosecution did not oppose the accused being released on bond but urged the court to call for pre-bail report to be filed to assist the court in determining the bond. The report was duly filed as directed.

PREBAIL REPORT

3. From the report, the accused did not attend any formal education. From childhood, he worked as a herder and when he became an adult, he engaged in farming within the community. He is married with 4 children. The accused admits use of alcohol and has no previous history of being admitted on bond terms. His family has no history of criminality. On behalf of accused's family, his brother prayed that accused be granted favorable bond terms though they are yet to identify any surety. The accused understands the seriousness of the offence and prays for lenient bond terms.
4. The family of the victim are still bitter and are not yet ready to have the accused back in the community. The victim's brother stated that as a family, they had hosted the accused and given him a piece of land to build on but he betrayed them and they are angered by his actions. The victim's family in its entirety is not ready to receive the accused back home and they pray that his trial proceed while he is in custody.



5. They stated that the children of the victim have had to be distributed between the family of the victim and the family of the accused. The two families are working together to provide for the children of the victim.
6. The local administration described the accused as a well-known troublesome person within the community, a habitual thief and someone who acts quickly without seriously thinking about the consequences of his actions. This has led to him being in conflict with several members of the community. Further that the accused is well-known for numerous marital squabbles which were often resolved through village elders and the local administration. At the moment, the community is still hostile towards the accused and the local administration are of the view that safety of the accused cannot be guaranteed if he is released on bond and they therefore strongly opposed to his release on bond at the moment. They propose that the accused's application for bond be reconsidered later after hostility towards him subside.
7. The accused and his family are yet to identify any surety that can be used to secure the release of the accused person if he is admitted on bond terms.

DETERMINATION

8. 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.”
9. 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.
10. 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—
 - 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;
 - (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.

11. 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.”
12. 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.
13. The accused faces the grave charge of murder; but 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).
14. 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.
15. From the sentiments given by local administration, the ground is still hostile thus accused's security will not be guaranteed if he is released on bond. It would therefore be safe for accused to remain in custody until there is assurance that his safety will be guaranteed. In view of the above, it will not be safe to release the accused on bond at this stage of trial.
16. Final orders: -
 1. Accused is hereby denied bond
 2. Accused to renew bond application at a later date when circumstance in respect to his security change.



**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 7TH DAY OF
MAY 2025.**

.....

RACHEL NGETICH

JUDGE

In the presence of:

- Accused present
- Ms. Kosgei for State.
- Kibet, CA.

