



**Republic v Kimata (Criminal Case E008 of 2024)
[2025] KEHC 5917 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E008 OF 2024**

RB NGETICH, J

MAY 7, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL MACHARIA KIMATA ACCUSED

RULING

1. The accused Samuel Macharia Kimata 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 14th day of August, 2024 at Timboroa area in Koibatek Sub- County within Baringo County, murdered baby Sharleen Wanjiru Muthoni.
2. On the 16th September,2024, the charge and its full particulars were read over to the accused who denied the charge and a plea of not guilty was entered. The prosecution opposed the accused being released on bond until the mother of the deceased testifies on ground that he may interfere with witnesses and he may harm the mother of the deceased who is also the accused’s wife. They undertook to file an affidavit within 7 days.
3. The application for bond was heard and a ruling delivered on the 17th October,2024 where the court rejected the application and gave directions that the Applicant may renew bond application after the deceased’s mother has testified. The court further directed that hearing of the matter to proceed on priority basis.
4. The matter came up for hearing on the 19th March,2025 when 3 prosecution witnesses testified and the prosecution informed court that 7 witnesses remained and among them are 4 police officers who had been send for urgent duties and the doctor who was in active surgery at the moment and they would also call the Government analyst.



5. The defence counsel Mr. Ndarwa submitted that the court delivered a ruling rejecting bond and directed that the accused could renew bond application and prayed that the accused released on bond as he is willing to abide by the terms of the court.
6. The court ordered that the second pre-bail report be prepared and the matter was fixed for hearing on 22nd May,2025 and mention for pre-bail report was fixed for 8th April,2025. On the said date, the prosecution counsel Ms. Omari informed the court that the pre-bail report had been filed and the matter was fixed for ruling on 7th May,2025.

Pre-Bail Report

7. From the report, the accused comes from a close-knit middle- class family. His father operated rental house business in Timboroa and the mother is a business lady who manages the family's timber business and other properties. The accused is the last born in his family and has three siblings. There is no criminal history in the family. The accused sat for KCSE in the year 200 4 and attained B plain grade then joined the NYS in 2009-2010. He is an active athlete and from 2019 he engaged in running the family's guest houses at Timboroa area until his arrest.
8. The report indicate that the accused lived with the deceased's mother and the deceased who was aged 4 years was not the biological daughter of the accused and that the accused sired the second child with deceased's mother.
9. The accused's family members understand the gravity of the offence though they do not believe that the accused committed the offence having been brought up with Christian values. Further that they were not aware of the accused's relationship with accused's mother until when the incident occurred. They promise that the accused will keep off the victim and he will adhere by bond terms if granted bond. Accused also promises to avail himself when required and promises not to interfere with the witnesses.
10. For the purpose of this report, family members of the accused, his neighbors and the local Administrators were interviewed and their opinion sought. The area administrators from Timboroa stated that the accused's family relocated to Timboroa area a few years ago from Trans-Nzoia and they cannot vouch for the accused's past behavior since they have known him for short time. They further added that cases of murder are common in the area and the community members are more likely to take law into their own hands.
11. The area administrator from Bidii Location within Trans-Nzoia where the accused was raised added that they know his family and that he has no criminal record. They added that he has been on and off the community and therefore could not comment about his recent behavior.
12. The community members and neighbors from Timboroa area stated that for the short period the accused has been in the area, he has been abusive to the deceased's mother and the cases were resolved out of court. They described him as an alcoholic, arrogant and defiant to authorities and hot-tempered individual with weak community ties. They expressed bitterness and said the accused is a stranger and if granted bond, he may abscond. They added that if granted bond, he should not go back to Timboroa area as they believe he committed the offence and they are not ready to receive him back now.
13. The family members agreed that if he is granted bond, the accused will go back to his ancestral home in Trans-Nzoia and will ensure that he attends court whenever he needed. They have security to deposit in court.



Determination

14. Article 49(1)(h) of the Constitution provide 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.
15. Further, Article 50(2) of the Constitution provide that every accused person is entitled to the presumption of innocence and 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.
16. Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, provide as follows: -
 - (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—
 - (a) 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;
 - (b) should be kept in custody for his own protection.
17. And under 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.”
18. 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.
19. 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.
20. From the sentiments given by the local administration, the community in Timboroa area where the incident occurred are still hostile towards accused. They are also apprehensive that the accused is likely to abscond if released on bond as they term him deviant and unlikely to obey instructions. On the other hand, the family of accused have indicated that if released on bond, the accused will stay in Tranzoia and they have security to deposit and they will ensure that he attends court when required. I had earlier considered bond application and declined but directed that the accused may apply for bond after the deceased child's mother has testified. The mother of the deceased has testified. The prosecution indicated that the remaining witnesses are police officers and formal witnesses. The ground of likelihood to interfere with witnesses therefore no longer exist.
21. On safety of the accused, the family of the accused have indicated that he will stay in Kitale and not Timboroa where his security may be compromised. On fear of accused absconding, the accused's family have indicated that they will deposit security in court and ensure that he attends court when required. From the foregoing, I see no reason to deny accused bond.
22. Final Orders: -
- 1. Accused may be released on bond of kshs 1 Million with one surety of a similar amount.
 - 2. The surety and accused to undertake that he will not go to Timboroa where the Incident Occurred.

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

RACHEL NGETICH

JUDGE

In the presence of:

Accused present.

Mr. Ndarwa for accused.

Ms. Kosgei holding brief for Omari for State.

Karanja, CA.

