



**Republic v Ng’elel (Criminal Case E003 of 2025)  
[2025] KEHC 8762 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8762 (KLR)

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

**RB NGETICH, J  
JUNE 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ALEX KIMELI NG’ELEL ..... ACCUSED**

**RULING**

1. The accused person Alex Kimeli Ng’elel herein 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 24<sup>th</sup> day of March, 2025 at Kamelee area, Saos-Kibias Location in Koibatek Sub-County within Baringo County murdered Mercy Jebaskwony Chirchir.
2. On the 19<sup>th</sup> May,2025, the charge and its full particulars were read over to the accused person who denied the charge and a plea of not guilty was entered. The defence Counsel Mr. Songoyo prayed that the accused be admitted to bail and following this, the court directed that a pre-bail report be filed.

**Pre-bail Report**

3. The pre-bail report was filed as ordered. From the report, the accused person is aged 32 years. He sat for his Kenya Certificate of Primary Education examinations at Tolmo Primary School and scored 287/500 marks but did not proceed to secondary school due to socio-economic challenges. He engaged in casual jobs at quarry to earn a living until the time of his arrest. He was married to deceased herein and had one child aged 2 years but they separated. The deceased victim is buried at the accused’s land after the family of the accused paid the dowry as per the Tugen tradition while the accused was still in custody.
4. The accused abused alcohol. No ill health report concerning him was presented at the time of compiling this report and according to Probation and Aftercare risk assessment instrument, the accused is of medium risk considering his chances of recidivism.



5. The accused's family owns land through inheritance. The land is not yet sub-divided and the title deed still bears the name of the accused person's late grandfather; the family is yet to undertake succession process.
6. The accused person understands what bond means. He prays for admission into favorable bond terms stating that he will obey all the conditions which will be set by this court. He promised to attend court proceedings whenever required and not interfere with the witnesses. He revealed that he was in communication with the deceased victim's family members and were not opposed to his bond application.
7. The accused person's family pleaded that the accused person be considered for a lenient bond term; they revealed that the family was in the process of finding ways of raising bond for the accused if granted. They stated that the accused previously led a lawful life, related well with other members of the family and they believed that he will obey bond terms if given. They are willing to support him if he is granted bond and ensure he attends court whenever needed. They revealed that the accused's 2 year old is with accused's mother.
8. The family of the victim is against the accused person being granted bond. The members of the family are still bitter and traumatized by the death of their loved one. They do not wish to see the accused person and believe that granting bond to him is a precursor of interfering with the witnesses.
9. The local administration is against the accused being granted bond. The administrators interviewed perceive the accused as a security threat. They revealed that he has been the prime suspect of selling illicit brew within his home location and all the efforts of warning so as to change to live a lawful life have been in vain. They have little trust on him obeying bond terms if given a chance.
10. The administrator also stated that there have been several incidences of murder within Saos Kibias Location, and the most recent one the suspect involve accused's cousin and they are of the opinion that stringent bond terms should be given to murder suspects from that area.

### **Determination**

11. 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.”
12. 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.
13. 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—
- (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.
14. 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.”
15. 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.
16. 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.
17. The accused prays for favorable bond terms so that he may continue with the case while out of custody.



18. From the pre-bail report, the accused's family is praying that the accused be granted favourable bond terms and that they are ready and willing to support him in any way. The victim's family members are opposed to the accused person being granted bond stating that they are yet to heal from trauma resulting from this offence. They said that they cannot wish to see the accused as that will remind them of the harshest treatment that led to the death of one of their own. They recognize that the accused person and the deceased victim were once married and have a child. The local administration are of the view that accused is likely to abscond. He has not talked of any threat to accused's life or any likelihood of accused interfering with witnesses. In view of the above, I do not see any compelling reason to deny accused bond.

19. From the foregoing, I allow the application for bond on the following terms:-

20. Final Orders:-

Accused may be released on bond of Kshs.300,000/= with one surety of a similar amount.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Ms. Omari for State.

Mr. Songoyo for accused.

Applicant present.

CA, Elvis/Momanyi.

