



**Republic v Salgong (Criminal Case E004 of 2025)  
[2025] KEHC 8786 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE E004 OF 2025**

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

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BONENGRS KIPRUTO SALGONG ..... ACCUSED**

**RULING**

1. The accused person 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 1<sup>st</sup> day of September,2022 at Kisarget area, Poror Arama Location in Koibatek Sub- County murdered Benard Kimeli Kipkorir.
2. On the 3<sup>rd</sup> June,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. Ms. Kosgei requested that a pre-bail report be filed.

**Pre-bail Report**

3. From the report, the accused was born in the year 1985. He undertook a Diploma course in journalism at Kenya College of Commerce and Hospitality in Nairobi where he graduated in the year 2007 and later secured attachment at Royal Media Service Company in the year 2008. He shortly worked at Telkom Company in Lodwar before he was offered another chance to work at the Royal Media Services in the year 2014. He was arrested in the year 2015 and charged with the offence of murder. He is married with 3 children.
4. From the enquiry, the accused person was admitted to bond in criminal case No. HCCR 57/2023 but he did not adhere to the bond terms.
5. The victim’s relatives are opposed to accused being released on bond on ground that they feel insecure and he is likely to intimidate potential witnesses to the case.



6. The area administrator indicated that the accused did not have a positive record in the community. He went on to share that he had been associated with other cases of similar nature. He feared that the accused person may not adhere to the bond terms and may end up absconding. He also feared for the safety of the accused person as well as the relatives of the late victim.
7. The family members declined to stand surety for him. His father indicated that accused had absconded before. From the report, the accused does not relate well with the community members. He expressed discomfort for his prayer for release on bond.

### 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—
    - (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.
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 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.
14. The accused prays for favorable bond terms so that he may continue with the case while out of custody. From the pre-bail report, the accused’s family are not willing to stand surety for him on ground that he absconded bond in the past. The victim’s members are opposed to the accused being granted bond stating that they fear for their lives and those of the witnesses who may be intimidated by him. The local administration perceives the accused person as a security threat who may not obey bond terms if granted. They also fear for his security and that of the witnesses in the case.
15. From the foregoing, several reasons not to grant the accused bond have been brought out in the pre-bail report. First the accused is a flight risk, he is likely to abscond following his past records, secondly, he is a security threat to the community and his life is not safe if released at this stage of trial. Thirdly, the accused is likely to interfere with witnesses. In view of the above, I find that there are compelling reasons to deny accused bond. The application for bond is hereby declined.
16. Final Orders:-
  1. Bond declined.
  2. To apply at later stage.

**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.

Accused present.

Mr. Kipkulei for accused absent.

CA, Elvis/Momanyi.

