



**Republic v Yator (Criminal Case E005 of 2025)  
[2025] KEHC 8837 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8837 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE E005 OF 2025**

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

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RICHARD KIBICHIY YATOR ..... 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 8<sup>th</sup> day of May,2024 at Posta village, Kiplombe Location in Koibatek Sub- County within Baringo County murdered John Kipkoech Cheptoo.
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. Mr. Kipkulei informed the court that he had been appointed by the family of the accused to represent him in the matter. He requested that the accused be released on favourable bond terms. The court directed that a pre-bail report be filed.

**Pre-Bail Report**

3. The pre-bail report was filed as directed. From the report, the accused person was born in 1974. He dropped out of school while in standard three due to perennial ill health. He engaged in farming up to the time of his arrest. He is married with five children. He abuses alcohol and according to Probation and Aftercare risk assessment instrument, the accused is of medium risk considering his chances of recidivism.
4. The accused family have title deed which is still in accused father’s name.
5. The accused understands what bond means and 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. He however fears for his life for a possible retaliation from the deceased victim's family. He informed that if he is granted bond he will relocate to another land owned by his late father which is far from the victim's family.

6. The accused person's pleaded for lenient bond terms. They do not perceive the accused as a security threat. They are willing to help him attend court when needed. They revealed that a family friend was willing to secure him with bond. They indicated that the deceased victim was a neighbor and one of his daughters is married by accused's nephew.
7. The family of the victim is not against the accused being granted bond. The family however indicated that he should keep away from victim's family as some family members are yet to heal from trauma caused by the present offence.
8. The local administration is not against the accused person being granted bond. The administrator interviewed did not perceive the accused as a security threat or a flight risk.

### **Determination**

9. 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.”
10. 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.
11. 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.

12. 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.”

13. 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.

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. The accused prays for favorable bond terms so that he may continue with the case while out of custody. From the pre-bail report, all the persons interviewed are not against the accused being granted bond. They revealed that they are close neighbors and a daughter to the deceased victim is married to a nephew of the accused. They are however of the opinion that if he is granted bond, he should relocate to protect him from any form of retaliation. The accused has also expressed the fear of back to where the incident occurred and promised to relocate to another land belonging to his late father until this matter settled.

16. Final orders: -

Accused may be released on bond of kshs 500,000 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.
- Accused present.
- Mr. Kipkulei for accused absent.
- CA, Elvis/Momanyi.

