



**Republic v Keter (Criminal Case E0271 of 2024)
[2025] KEHC 9922 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E0271 OF 2024
JRA WANANDA, J
JULY 10, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES KIPKETER KETER ACCUSED

RULING

1. The accused person, a 41 years old man, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 13/12/2024 at Kapsamoi village, Ngeria sub-location, Kapyego location, within Uasin Gishu County, he murdered one James Kipketer Yamaa. It is alleged that the deceased was the accused person’s own 72 years old father.
2. The accused is represented by Ms. Damaris Moronge as pro bono Counsel appointed by the State, was arraigned before me on 14/01/2025 when he took plea. He denied the charge and a plea of not guilty was entered. Ms. Moronge then applied for release of the accused on bail/bond, upon which I called for a pre-bail Report before I could make a decision.
3. The pre-bail Report dated 4/05/2025 was then filed as directed. The Report was unfavourable and returned the recommendations that:

“ considering the accused's limited support system and the ongoing family tensions stemming from his alleged involvement in the serious offence, as well as the hostility directed toward him, we recommend that bond be denied at this stage of the trial. This would allow adequate time for key developments in the case, particularly ensuring that vulnerable witnesses can testify without fear or intimidation. Additionally, it would help to defuse the heightened emotions surrounding the matter.”



4. The basis for the above recommendation was that:

“..... the social inquiry has revealed that the accused person, being the son of the deceased, faces significant challenges due to his family's low socio-economic status and strained relationships following the alleged offense. Both parents of the accused are deceased. and his siblings are financially incapable and unwilling to stand surety, likely due to lingering tensions related to the incident. Despite the accused praying for lenient, it is evident that family support is minimal, and there is no external support to ensure adherence to bond conditions Although the home environment appears relatively calm, lingering tensions related to the father's death persist and could potentially cause underlying conflicts, especially since the matter is still recent. Additionally, we found that the accused faces immediate threats for his safety, including from his own family, if he is released soon.”

5. The Prosecution also filed the Affidavit sworn by Corporal Frederick Pete who deponed that the deceased was the father to the accused who lived together with him in the same home state, and that it is the same place of residence where the deceased was found dead. He deponed that investigations reveal that before the accused committed the alleged offence, he had threatened the deceased together with his brothers, who are now the key prosecution witnesses, that the matter was reported to the police for the offence of threatening to kill, and was investigated and the file forwarded to the Office of the Director of Public Prosecutions, which advised that the matter be referred to mediation. He deponed further that the manner in which the murder was committed was gruesome and horrific especially to a key prosecution witness who found the deceased in a critical condition, that a crucial Prosecution witness is a relative of the accused and the deceased and who resided in the same residence with the accused, and who is a crucial witness but is yet to testify in this matter. He deponed that should the accused be released on bond, he will have easy access to the witness by virtue of living in the same residence, that other crucial witness are confidants of the accused person who are similarly within easy reach of the accused person and the accused person is likely to reach out to them and intimidate them and/or adulterate their evidence.
6. Corporal Pete added that the perception among the members of the public is that the accused person committed the crime in order to take over the property of the deceased [land], that the deceased was well-known and a beloved member of the society and that he news of his gruesome murder at the hands of his son has caused uproar in the community. He therefore urged that if the accused is released on bail/ bond, there is a high likelihood that he will be put in harm's way by members of the community, that the evidence against him person is quite overwhelming and so are the chances of securing a conviction, that this raises the chances to jump bail and that considering the heinous manner in which the murder was committed coupled with the fact that it was pre-meditated, the Prosecution will be seeking for the death penalty and that this raises the chances of the accused person absconding bond to avoid suffering the sentence. He also pointed out that the accused, after the incident, even had to surrender at the police station for his own safety.
7. Ms. Moronge then sought, and I granted her, leave to file an Affidavit in response, which she did by filing the Replying Affidavit sworn by the accused person on 4/03/2025. In the Affidavit, the accused deponed that there is no proof that he was charged with the offence of threatening to kill, and that no charge of threatening to kill has been preferred against him before any Court, that the Prosecution has not adduced any compelling reason to warrant denial of bond as the grounds alleged are flimsy and motivated by malice and ulterior motives, and that the averment that he stands to interfere with the witness is far-fetched as there is no proof. He deponed further that the allegation that members of the public perceive that he committed the crime in order to take over the property of the deceased lack



proof, and that the allegations that there is overwhelming evidence, and chances to secure a conviction are high are matters to be dealt by the Court, and that perceptions do not amount to a conviction. He also urged that no threat has been advanced to the witnesses as he has been in custody since his arrest on 14/12//2024, that bond is usually given with conditions and can be varied at any time if the accused breaches the terms attached. He denied that he is likely to jump bail and deponed that the Affidavit filed by the Prosecution is a well-orchestrated move to deny him bail/bond and the reasons deponed do not meet the threshold of compelling reasons and as such should be ignored. In conclusion, he deponed that has suffered great hardship and injustice as he has been in prison for many months now and he has children who are minors and have been left suffering as they depend on him for their daily upkeep.

Determination

8. Evidently, the issue that arises for determination is “whether there are justifiable grounds for denying bail to the accused person”.
9. In regard thereto, it is not in dispute that under Article 50(2) of the *Constitution*, every accused person is presumed innocent until the contrary is proved. In relation thereto, the right to bond or bail is recognized under Article 49(1)(h) which provides that every accused 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. Regarding what amounts to “compelling reasons”, the Court of Appeal, in the case of *Republic v Nuseiba Mohammed Haji Osman* [2018] eKLR stated as follows:

We stress the key words “unless there are compelling reasons” and adopt the definition of what amounts to compelling reasons in the High court decision of R V Joktan Mayende & 3 Others, Criminal Case 55 of 2009 as follows:

“...And accordingly, the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.”

11. From the foregoing, it is evident that the right of an accused person to be released on bail is a balance between the rights of the accused person and the interest of justice, law and order, including factoring in the interest of the victim, or in a case of murder, his family (see Supreme Court decision in *Waititu v Republic* (Petition 2 of 2020) [2021] KESC 11 (KLR) (22 October 2021) (Judgment)). As was correctly observed in the said case of *Republic v Nuseiba Mohammed Haji Osman* (*supra*), the liberty of every person is sacrosanct and being presumed innocent until proved guilty is a constitutional principle that is intended to keep intact the general fabric of the accused person’s life. On the other hand, the State has a constitutional duty to prosecute those who commit crimes, to ensure public safety between the time of arrest and trial of an accused person, and to protect the integrity of the criminal justice system. In the course of realizing these goals, the individual right to liberty may be qualified. The Court then added as follows:

“It follows that where there is sufficient and compelling evidence that an accused person may undermine the integrity of the criminal justice system, by, for example, intimidating witnesses or interfering with the evidence, or fleeing the jurisdiction of the court, or by posing a danger to himself or to any other individual or to the public at large if released, then



there will be justification to either deny such an accused person bail, or set stringent bail or bond terms in the interests of justice."

12. The above principles are also captured in Section 123A of the [Criminal Procedure Code](#) and the [Judiciary Bail and Bond Policy Guidelines](#).
13. In this instant case, one of the grounds cited in opposing the Application for release on bail/bond, is that even if granted bail/bond, considering the accused person's economic status and that of his extended family, it is unlikely that he will manage to raise the same. Further, and more important, it is alleged that there is hostility against the accused from members of his own family and the community at large, and therefore his release may stock lingering tensions and his own safety may also not be assured. In fact, the Pre-bail Report indicates that the family of the deceased strongly opposes the release on the ground that the accused poses a threat to them as it is they who may be witnesses in Court.
14. The allegations made in the Affidavit of Corporal Fredrick Pete regarding the accused person's previous conduct and temperament, though not provable at this stage, are also grave and cannot be ignored.
15. Needless to state, the views of the family of the deceased, as bitter or aggrieved as the family may still understandably be for the loss of their loved one, would not "tie the hands" of this Court in making an independent decision devoid of emotions since the accused is, as aforesaid, presumed innocent until proved otherwise.
16. Having considered this matter in totality however, I am satisfied that there has been demonstration of the existence of sufficient and/or compelling grounds to believe that the accused person, if released, may interfere with witnesses or even intimidate them. There is also the risk that being only about 7 months since the incident occurred, the family members of the deceased may still be bitter with the accused and as a result, there is the possibility that his release at this stage, may escalate such family tensions especially since not a single witness has testified as yet. The home where the accused intends to return also constitutes the alleged scene of crime, and further, the family members residing therein do not seem eager to receive him back at this stage. Who then is going to take the responsibility of ensuring that the accused person remains available for Court attendances and/or give progress updates on the accused?
17. My view is that the issue of bail be deferred to a later date, probably after some of the presumed "vulnerable" witnesses have testified, or when there is indication that the situation on the ground has changed and has become conducive for release of the accused.

Final Orders

18. The Application for bail/bond is therefore denied at this stage but the accused is at liberty to renew the same for re-consideration by the Court at an appropriate time as alluded above.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 10TH DAY OF JULY 2025.

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Ms. Muriithi for the State

The Accused Person



Ms. Moronge for the Accused Person

Court Assistant: Brian Kimathi

