



**Republic v Limo (Criminal Case E024 of 2023)
[2024] KEHC 1416 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E024 OF 2023
RB NGETICH, J
FEBRUARY 15, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MOSES MARTIM CHEBET LIMO ACCUSED

RULING

1. The accused person Moses Martim Chebet Limo has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the charge being that the accused person on the on the 29th day of October, 2023 at Kaptere village of Kaptere Sub-location in Baringo North Sub- County within Baringo County murdered Alfonse Chepkangor.
2. The charge and its full particulars were read over and explained to the accused on the 28th November, 2023. He denied the charge and a plea of not guilty was entered. The prosecution did not oppose the accused being released on bond. The court directed that a pre-bail report be availed to court to assist the court in determining bond terms.
3. Pre-bail report was filed on the 14th December, 2023. From the report, the accused attended St Joseph's in Molo where he did his KCSE and attained a grade of B (plain). He did not proceed to join a university but engaged in farming at home and later joined the Kenya Prison Service as a warden where he underwent his training from the year 2006 to 2007 and he was posted to Langata Women prison. He however deserted duty due to alcoholism and he was interdicted. He returned home where he engaged in farming and casual labor so as to earn a living which he was still doing at the time of arrest. He had married one Annette and were blessed with one child but they separated and the wife went to her home with the child due to accused being alcoholic.
4. The accused person seeks bond and says he is in good terms with members of his family; that there is no hostility and he promises to attend court when required. The community describe the accused as a



drunkard. The area local administration says while the family members of the accused may be willing to have the accused admitted on bond/bail, most of the members of the community are still in shock and they may be hostile towards the accused and are of the view that he should remain in custody for a while to allow tension on the ground to subside.

5. The village elder who is also accused's neighbor stated that the accused has a history of violence citing an incident where he previously stabbed their late father and, in his view, releasing the accused on bond might cause more conflict in the family. The investigation officer on his part stated that he does not view the accused person as a flight risk and therefore does not oppose bond but the last say should be with the family since the conflict is at the family level.
6. On the other hand, the accused's sister who lives in Nairobi indicated that she had no reason to oppose bond since the accused is their brother and the victim is also their brother. The accused's uncle indicated that the siblings who are at home are opposed to accused being released on bond and the family will have a meeting to discuss the matter. However, the probation officer's call to the family to follow up on the outcome of the meeting, was not fruitful as the family were uncooperative and did not answer calls.

Determination

7. 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.”

8. Section 123A of the [Criminal Procedure Code](#), Chapter 75 of the Laws of Kenya provide circumstances to be considered as hereunder: -

- (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.



9. 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.”

10. More factors in the guidelines include the following: -

- 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.

11. 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.

12. From prebail report, the family of the accused who are also the family of the victim have not shown any willingness to accept the accused back home. They are still bitter with the accused for the offence he committed. In my view the accused’s safety is not guaranteed. That in my view fit in the category of compelling reason to deny accused bond.

13. Final orders: -

1. Accused is denied bond.
2. Accused may renew bond application at a later state when circumstances change.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 15TH DAY OF FEBRUARY 2024.

.....

RACHEL NGETICH

JUDGE



In the presence of:

Ms Ratembo for State.

Ms Kogo for accused.

Accused present.

Elvis & Sitienei – Court Assistants.

