



**Republic v Simon & 5 others (Criminal Case E025 of 2023)  
[2024] KEHC 1417 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E025 OF 2023  
RB NGETICH, J  
FEBRUARY 15, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EVANS CHEROGONY SIMON ..... 1<sup>ST</sup> ACCUSED**

**COLLINS CHEBOR KIBOWEN ..... 2<sup>ND</sup> ACCUSED**

**DUNCAN KIPCHUMBA CHEPTUMO ..... 3<sup>RD</sup> ACCUSED**

**EVANS KIPROP KOMEN ..... 4<sup>TH</sup> ACCUSED**

**COLLINS CHEPTARUS KIPRUTO ..... 5<sup>TH</sup> ACCUSED**

**DISMAS KIBICHI BARGATAN ..... 6<sup>TH</sup> ACCUSED**

**RULING**

1. The 6 accused persons have 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 persons on the 18<sup>th</sup> day of October, 2023 at Katimok forest of Ossen Location in Baringo North Sub- County within Baringo County, murdered Mary Cherop.
2. On the 28<sup>th</sup> November, 2023, the charge and its full particulars were read over to the accused persons who all denied the charge and a plea of not guilty was entered. The prosecution did not oppose bond. The court called for pre-bail reports in respect to accused persons to assist the court setting bond terms. The pre- bail reports for each of the three accused were filed on 15<sup>th</sup> December, 2023.



### **1<sup>st</sup> Accused Pre-bail Report**

3. From the report, the first accused person dropped out while in form 2 out of his own accord citing personal reasons and has engaged in casual labor until the time of his arrest. He is single and has no children. He said he is ready to provide surety and will attend court when required.
4. The local administration indicate that the ground is hostile and the incident is still fresh in their minds and there is fear and tension within the community adding that most of the accused persons were arrested by members of the community and there was a feeling of lapse and lack of action by the police and there are members of the community who wanted to take the law into their own hands; that they may take the law in their hands and are of the view that they should remain in remand until such a time that tension within the community subsides.
5. A village elder who is also a retired assistant chief stated that while some members of the larger community may be hostile towards the accused persons due to the nature of offence, the biggest threat according to him is the husband of the victim, his relatives and the siblings and cousins of the deceased. According to him, since they were close with the deceased, they are still very angry with some of them openly expressing that the accused persons should not be set free or else they may harm them. He is of the opinion that the accused persons remain in custody.
6. The accused's brother is willing to deposit title deed as surety. His opinion is that the accused person will be safe in the community.
7. From the report, the victim's husband is still very bitter and very emotional; the probation officer says in his report that he broke down severally during the interview and kept repeating that police should be ready for further conflict if accused persons are released on bond and added that his young children are yet to come to terms with the loss of their mother and this keeps on upsetting him thus his bitterness towards the accused persons.
8. Victim's cousin who was interviewed indicated that as a family, they are still upset and are still to come to terms with the gruesome way in which the victim was murdered. While he understands the court process and that the accused persons are innocent until they are proven guilty, he still held the opinion that as of now, the ground is still very hostile towards the accused persons and they should stay in custody.

### **2<sup>nd</sup> Accused Pre-bail Report**

9. From the report, the accused had formal education up to class eight when he sat for his KCPE and attained 163 marks out of 500 and did not proceed to secondary school for lack of school fees. After dropping from school, he begun engaging in casual labor until the time of his arrested. He is single with no children. He prays for bond and promises to attend court when required. His aunt is willing to stand surety for him.
10. The local administration indicate that the ground is hostile; that the incident is still fresh in the mind of many with the general feelings being that of fear and tension within the community. They restated the sentiments captured under accused 1's report above. The village elder gave similar sentiments.
11. The family of the accused are of contrary opinion and are willing to stand surety for him. The views of the victim's husband are as captured under first accused's report above.



### **3<sup>rd</sup> Accused Pre-bail Report**

12. The accused attended school up to form 2 and dropped out citing school fees constraints. He began to engage in casual labor within his locality. He is married with 3 children. The accused prays for bond so as to continue providing for his family and promises to attend court when required if released on bond. His father is willing to stand surety for him.
13. The local administration gave similar sentiments as captured under accused 1 above. Same to sentiments of a local pastor and village elder who spoke on behalf of the community
14. The father of the accused is of contrary view and is willing to stand surety for him.
15. The views of the victim's husband and cousin are as captured under accused 1 above.

### **4<sup>th</sup> Accused Person Pre-bail Report**

16. The 4<sup>th</sup> Accused sat for his KCSE in the year 2023 while in remand. He is single with no children. He prayed for bond and said he was assaulted during arrest. He said he is ready to move to his mother's place if the ground is hostile. He has identified his step brother Robert as the person who can provide security for him.
17. Sentiments of the local administration, local pastor, village elder are as captured under Accused 1 above. The step-brother of the accused is of contrary view. sentiments of victim's husband and cousin are as captured under accused 1.

### **5<sup>th</sup> Accused Pre-bail Report**

18. The accused person was a student at Kapkwan Secondary School and was to joining for 3 in January 2024. He prayed for bond so as to continue with his education come January and said his Aunt Damaris may provide security for him and stated that he was assaulted when he was arrested.
19. Sentiments of local administration, local pastor and village elder are as captured under accused 1 above. The mother of the accused person indicated that the father of the accused had absconded his parental duties but that notwithstanding, she prayed that the accused person be released on bond and accused's aunt will provide surety. The accused's Aunt confirmed that she was willing to provide security for accused if granted bond. The husband and cousin of the victim gave similar sentiment as captured under accused 1 above.

### **6<sup>th</sup> Accused Pre-bail Report**

20. From the report, the 6<sup>th</sup> accused person dropped out while in form 2 in the year 2020. Thereafter, he proceeded to Mogotio vocational training Centre where he is undertaking a course in plumbing. He was arrested from college. He is single with no children. He promises to attend court when required if released on bond. He says his mother will provide surety.
21. Sentiments of local administration, local pastor and village elder are as captured under accused 1 above. The accused's mother stated that she has been struggling to raise the three children after she separated from her husband. She prays that the court admits the accused on lenient bond terms since she is the only one who will have to find the surety.
22. The husband and cousin of the victim gave similar sentiment as captured under accused 1 above.



## Determination

23. 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 as follows:-

“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.”

24. 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.

25. 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.

26. 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.”

27. 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.
28. 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.
29. From the views of the local administration, the community and family of the victim, the accused persons are not a flight risk and they are able to get a surety who will ensure that they attend court when required. However, the challenge is that, the family of the victim as well as the community are still very bitter and there is fear that the family of the deceased may retaliate. The life of the accused will be at risk if released. Despite the fact that the accused persons are presumed innocent until proven guilty, it would be in the interest of justice to protect them from harm that may be occasioned to them as a result of animosity and anger arising from allegations that they cut short the life of the deceased herein. Life is sacred either way; there is need to protect the lives of both victim and accused persons; this court is enjoined by the constitution to ensure protection of life of all Kenyans.
30. From the foregoing, I find that it is not appropriate to release the accused persons on bond at this stage of trial.
31. Final Orders:-
- 1. Accused persons denied bond at this stage of trial.
  - 2. Accused persons may renew bond application when circumstances change.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Ms Ratemo for State

Ms Kogo for all accused.

All Accused present.



Elvis & Sitienei – Court Assistants.

