



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Chemjor (Criminal Case E013 of 2023)
[2024] KEHC 1299 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E013 OF 2023
RB NGETICH, J
FEBRUARY 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SILAS BARCHIBA CHEMJOR ACCUSED

RULING

1. The accused person 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 on the 30th day of May, 2023 at Matingot village of Kaptich Sub-location in Baringo Central Sub- County within Baringo County, murdered Florence Kibor.
2. The charge and its full particulars were read over and explained to the accused on 11th July, 2023. He denied the charge and a plea of not guilty was entered. The defence counsel Mr. Kipkulei applied for the accused to be released on bond pending the hearing. The prosecution informed the court they were not opposed to the accused being released on bond but following prebail report filed which revealed that accused's security was not guaranteed, the court declined to release accused on bond by ruling delivered on the 12th day of October, 2023. However the court granted the accused leave to renew bond application at a later date if circumstances on the ground change.
3. The Prosecution have so far availed 3 witnesses to testify with three other witnesses remaining. On 21st November, 2023, the defence counsel sought to be supplied with statements for the remaining witnesses and also renewed bond application for the accused stating that the accused is willing to relocate to his farm in Mochongoi and will not go to Tenges if released on bond. The prosecution counsel Mr. Abwajo submitted that there is need to re-assess the issue of the accused's security before bond is granted; the court directed the probation officer to do a social inquiry to assist the court in determining whether the accused can be released on bond.



4. A second social inquiry report was filed. From the report, the accused restated that if granted bond, he will relocate to either Solai or Mochongoi area where they have family land. He identified his sister Miriam as the person who will stand surety for him using pay slip as security.
5. The victims elder brother indicated that the accused's character has been unpredictable and opposed bond even if he intends to relocate to another place. He said the victim's family would prefer accused complete his trial while in custody.
6. The accused's children and two of his siblings were interviewed. The eldest son opposed the accused person being released on bond stating that his security at community level is not good since hostility level is still high even if he relocates to another area. The daughter proposed he be released on bond so that he can continue with his parental responsibility. The children further indicated that getting someone to stand surety for him is a bit challenge to them and they have no one who can deposit title deed.
7. Two of the accused siblings stated that they are not in position to stand surety for their brother indicating that they do not have any titled deed and they have not found any well-wisher who can stand surety for him. They supported the accused's wish to relocate to Mochongoi or Solai but said both parcels of land do not have a house and Mochongoi land has been leased for a period of seven years. They are not willing to facilitate construction of a house on both parcels of land; they are opposed to the accused being released on bond on ground that if he stays at his current homestead, his life is at risk since hostility level is still very-high.
8. The local administration and village elder all opposed the accused person being released on bond. They confirmed that the family has land at Mochongoi and Solai area but there is no house in any of the parcels. They both opposed the accused person being released at the moment stating that his immediate family and his in laws are still very hostile towards him. They confirmed that the accused's character is so unpredictable while under the influence of alcohol and they foresee a situation where he may return back to his homestead while under the influence of alcohol risking his own life.

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 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.”
10. Further, 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; they should not be subjected to the same rules and regulations as convicts.



11. Circumstances that the court ought to consider in determining whether to grant bond are provided under Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya which provides as follows: -

- “(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. Further, under the *Bail and Bond Policy Guidelines*, the general guideline is provided in Paragraph 4.9 as follows: -

“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 allegations against the accused herein are that he killed his wife a mother of 4 children. At initial stages of this suit, I declined to release accused on bond to protect him from hostility on the ground from his family and community as captured in the first prebail report. The second report filed following my directions reveal that the situation has not changed as the accused's family and the community are still hostile to the accused and are not willing to accept him back. The accused has indicated that he would relocate to Mochongoi or Solai but his family have said there is no house in any of the two-family parcels of land in Mochongoi & Solai and they are not willing to build one for him. In view of the above, the accused's security is not guaranteed. In my view, it would be in the interest of justice to ensure safety of the accused pending hearing and determination of this suit. I direct that the hearing proceed on priority basis.
16. Final Orders: -
1. Bond application is hereby dismissed.
 2. Accused to remain in custody until hearing and determination of this suit.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 14TH DAY OF FEBRUARY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kipkulei for Accused.

Ms Ratemo for State.

Accused present.

Elvis – Court Assistant.

