



**Republic v Cheruiyot (Criminal Case E024 of 2023)  
[2024] KEHC 1260 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1260 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E024 OF 2023  
JK SERGON, J  
FEBRUARY 13, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NICHOLAS KIPLANGAT CHERUIYOT ..... ACCUSED**

**RULING**

1. Nicholas Kiplangat Cheruiyot the Accused herein was charged with the information of Murder Contrary to section 203 as read with 204 of the [Penal Code](#). Particulars of the information dated 5th December, 2023, are that on 18th November, 2023 at Lemotit Area in Londiani Sub - County within Kericho County, the accused murdered Bernard Kiprono Bett.
2. The accused person pleaded not guilty to the offence. The Accused has now applied to this court to be released on bond pending trial.
3. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the Accused Person's Application for bond for the sole reason that he had been reliably informed by the investigating officer that the ground is too hostile
4. Mr. Kirui, Learned Advocate for Accused urged this Court to reject the assertion by Learned Prosecution Counsel and release the Accused Person on reasonable bail terms.
5. The County Probation Officer was directed to file a Pre-bail Probation Report within 21 days from the date of the directive.
6. The county probation officer filed a pre-bail report, in the said report, it is noted that the accused enjoys a quality relationship with his family. He practices small scale farming and operates a kiosk within the village.



7. The probation officer noted that the accused is willing to abide with the bond terms and conditions and will not try to jeopardize justice or interfere with the witnesses. The accused person stated that he is ready and willing to pursue justice in court.
8. The victim 's family do not have any compelling reason for the court to withhold his release on bond.
9. The accused is well known to the local administrator. The accused has ties in the community and relates well with villagers hence they are not opposed to the release of the accused on bond.
10. The probation officer noted that the accused has a fixed abode, the accused's family members are willing to post the requisite bond surety to secure his release, they assured this court on his safety within the community and that they would ensure that he attends court when required and further that the accused was neither a flight risk or a threat to the witnesses.
11. The probation officer noted that the accused had no history of criminality, has a family, holds interest in his small business and strong community ties and therefore based on the findings of the social inquiry and the assessment of the home environment, found no compelling reasons to withhold the accused's release on bond and therefore recommended that this court grant the accused bond.
12. The right to bail is both constitutional and statutory, the Accused Person has a constitutional right to be released on reasonable bail terms unless there is a compelling reason not to grant the accused person bail.
13. The right to bail is entrenched in article 49 (1) (h) of the Constitution which states 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."
14. As a constitutional right, its enjoyment can only be limited if exceptional circumstances are established. In interpreting the right to bail, section 123A of the Criminal Procedure Code cap 75 Laws of Kenya sets the parameters for the grant of the right to bail.
15. In Republic v John Kabindi Karisa & 2 others [2010] eKLR the court observed as follows;

"A murder suspect has a constitutional right to be released on bail. This is an inalienable right and can only be restricted by the court if there are compelling reasons for him not to be released."
16. In the instant matter, I have taken cognizance of the fact that the prosecution has not furnished this court with compelling reason (s) warranting this court to decline the instant application and furthermore the pre bail report is favourable, I hereby allow the application for bond, the applicant to be released on a bond of Kshs. 200,000/= with one surety of like sum.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2024.**

.....  
**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki



Accused – Present in Person

No Appearance for Evanson Kirui for Accused

