



**Republic v Ruto (Criminal Case E003 of 2024)
[2024] KEHC 2453 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E003 OF 2024
JK SERGON, J
MARCH 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL KIPTOO RUTO ACCUSED

RULING

- Samuel Kiptoo Ruto 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 February 7, 2024, are that on January 30, 2024 at Lesirwo Location in Kipkelion Sub - County within Kericho County, the accused murdered Darius Too. The accused person pleaded not guilty to the offence. The accused has now applied to this court to be released on bond pending trial.
- Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the accused person’s application for bond for the sole reason (s) that the accused would interfere with the witnesses, he killed his son who was a third year student at Karatina University.
- Mr. Munge, Learned Advocate for accused urged this Court to reject the assertion by the Learned Prosecution Counsel that the applicant would interfere with witnesses, he urged the court to consider the fact that the accused had a medical condition that required medical attention and subsequently release the accused on reasonable bail terms pending trial.
- The County Probation Officer was directed to file a Pre-bail Probation Report within 14 days from the date of the directive.
- The County Probation Officer filed a pre bail report, in the said report, it is noted that the accused is a family man with eleven children. The accused is an artisan in the village and practises small scale farming on his family land. The accused has a cordial relationship with his family members and the neighbours. However, upon commission of the offence, his immediate family members are bitter with



him and therefore urged this Court not to release him on bond till the bitterness subsides. The victim happens to be the accused's fourth born son.

6. The Probation Officer noted that the accused has a fixed abode at home. The accused is willing to pursue the matter in court to its conclusion. The accused beseeched this Court to grant him bond on a commitment that he will attend court as required and would not attempt to threaten the witnesses or jeopardise justice upon his release on bond. The probation officer deemed him not to be a flight risk.
7. The Probation Officer noted that the accused is well known to the local administrator and community members, moreso, for his artisan work in the village. He has cordial relations with neighbours and extended family members. The extended family members are willing to support him in the process of pursuing justice in court. The community members do not hold any grudge against him.
8. The Probation Officer noted that the level of bitterness among the immediate family members appeared to be in two factions. Among the family members, the deceased's mother and some of the children were opposed to the release of the accused on bond whereas there are others who were not opposed to the release of the accused on bond. The extended family and community members are not opposed to the release of the accused on bond. However, they leave the matter to the accused's immediate family to decide on when they are ready for him to be released on bond.
9. The Probation Officer highlighted that based on his findings there are no compelling reasons for the Court to withhold the accused's release on bond. Considering his age, the current health condition as narrated by the accused while in remand and the willingness of the extended family and neighbours to support the accused and his family in dealing with the matter. The Probation Officer therefore recommended that this Court considers granting the accused bond while his immediate family members agree when they will deposit the requisite security for his release.
10. 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.
11. 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."
12. 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.
13. 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."

The *Constitution* does not define the term "compelling reasons". However, there are several High Court cases that have deconstructed the phrase "compelling reasons" in *Republic v Joktan Mayende & 4 Others*; Bungoma High Court Criminal Case No. 55 of 2009, the court defined the term "compelling reasons" as follows:

" 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.”

In the case of Republic v Francis Kimathi [2017] eKLR, the court held that:

“There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests, attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution.”

14. In the instant matter, I have taken cognisance of the fact that the prosecution was opposed to the application for bail whereas the pre bail report is favourable. In my assessment, I find that there are compelling reasons not to admit the accused to bail, to with the fact that the accused is likely to threaten and/or interfere with witnesses. The other reason is that some of the accused’s immediate family members are still bitter and therefore opposed to his release on bail. The home environment is not receptive of the accused hence his safety is not guaranteed due to the hostility. The application for bail/bond is refused. The accused to remain in custody.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 12TH DAY OF MARCH, 2024.

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

Accused – Present in Person

