



**Republic v Kimoi (Criminal Case E005 of 2023)
[2024] KEHC 4265 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E005 OF 2023**

**RB NGETICH, J
APRIL 11, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EVANS KIPROTICH KIMOI ACCUSED

RULING

1. The accused Evans Kiprotich Kimoi 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 night of 7th day of November, 2023, at Tilatil Village in Koibatek Sub- County within Baringo County, murdered William Chemitei Kimoi.
2. The charge and its full particulars were read over and explained to the accused on 17th January, 2024. He denied the charge and a plea of not guilty was entered. The prosecution informed the court that they were not opposed to the accused being released on bond. The court directed that pre-bail report be prepared by Probation Officer to assist the court in considering views of people affected on the ground before determining bond.
3. The Report has been filed as ordered by the court. The report indicates that the accused is a son to William Kimoi and Liza Chepkoech who are both deceased. He is the last born in the family of eight siblings. All his siblings are adults and living independently. The accused lead single life and with no parental responsibility. The accused resided in the same compound with his father who is the primary victim of this matter. Apart from the accused, other of his family members have no criminal history.

Prebail Report

4. From the report, the accused is aged 26 years old. He sat for his Kenya Certificate of Secondary Education (K.C.S.E) examinations in 2018 and attained a mean grade of D+. He thereafter joined National Youth Service in Gilgil where he acquired a diploma in plan operator course. At the time of



his arrest, he worked as a conductor of a lorry. He abused alcohol and bhang. According to Probation and aftercare risk assessment instrument, the accused is of medium risk considering his chances of recidivism.

5. The family of the accused is known within Eldama Ravine Sub-Location, Eldama Ravine Location in Koibatek Sub-County. His siblings are all working in different parts of Kenya. Some of them have pieces of land that have title deeds. The family has the ability to raise bond. He prays for favorable bond terms and commits to comply with conditions to be set by this court; that he will attend court when required and maintain peace in the community. He believes that his life may not be in danger if he is given a chance to attend court from open community setting.
6. The family of the victim who are accused's brothers are opposed to accused being granted bond on ground that the accused threatened to kill the victim herein severally before he eventually actualized his plan; and he also threatened to kill his siblings and he commit suicide. They see accused as security threat to the family members as well as his own life. None of the family members is willing to stand surety; they are hostile towards accused and are unwilling to offer him any kind of support. They are of the opinion that he be denied bond for public safety reasons.
7. The local administration and police officers of Koibatek Police Station perceived the accused as a flight risk and security threat to the family members. The security agents are aware that the accused threatened to kill his siblings and thereafter commit suicide, a mission they fear he can actualize. They are of the opinion that the accused should be denied bond for security of his family members. The accused person's relatives and neighbors are against the accused being granted bond terming him a threat to the lives of his siblings.

Determination

8. 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.
9. Moreover, by dint of Article 50(2) of the [Constitution](#), every accused person is entitled to the presumption of innocence until proven guilty. 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; accused persons should not be subject to the same rules and regulations as convicts.
10. 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.
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 accused had threatened to kill the victim who was his father and he actualized it. The report indicates further the accused has constantly threatened his siblings and they now live in fear. The family members are opposed to him being released on bond and are not willing to stand surety for him. The local administration and the community view the accused as a security threat. In view of the above, I find that there are compelling reasons to deny accused bond.

Final Orders: -

13.
1. The accused is hereby denied bond.
 2. This case to proceed for hearing on priority basis.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 11TH DAY OF APRIL 2024.

RACHEL NGETICH

JUDGE

In the presence of:-

CA Sitienei/Momanyi.

Ms. Ratemo for state.

Ms. Kusolo for accused.

Accused present.

