



Republic v Sang (Criminal Case E007 of 2024) [2024] KEHC 5360 (KLR) (21 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E007 OF 2024**

JK SERGON, J

MAY 21, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

JAPHET CHERUIYOT SANG ACCUSED

RULING

1. Japhet Cheruiyot Sang the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars of the information dated February 28, 2024, are that on the 10th day of February, 2024 at Chebirirbei Shopping Centre, Kabianga Location in Belgut Sub County within Kericho County, the accused murdered Robert Kiprono Chirchir. The accused person pleaded not guilty to the offence. The Accused has now applied to this court to be released on bond pending trial.
2. Miss Chelang'at, Learned Advocate for Accused urged this Court to release the accused person on reasonable bond terms.
3. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions stated that there were no compelling reasons and therefore the prosecution was not opposed to the Accused Person's application to be released on pending trial on reasonable bond terms.
4. The County Probation Officer was directed to file a Pre-bail Probation Report within fourteen (14) days from the date of the directive.
5. The Kericho County Probation Officer filed a pre bail report. In the aforesaid report, it is noted that the accused enjoys cordial relationships with his family and the community. The accused has no history of criminality or antisocial behaviour. The family of the accused is conflicted as they are yet to agree on how to secure his bond and at same time are apprehensive as to the safety of the accused upon his release.



6. The family of the deceased are bitter concerning the demise of their kin and have expressed open hostility towards the accused and were therefore opposed to his release on bond.
7. The local administration was of the opinion that it would not be prudent to release the accused on bond as the home environment was still hostile.
8. The probation officer noted that the accused has a fixed abode and therefore not a flight risk but expressed concern for his safety as the home environment was hostile.
9. The probation officer noted that the social inquiry revealed that there was a need for the respective families to have reconciliation talks and forge the way forward before the accused could be released on bond. The probation officer reiterated that there was tension and animosity in the community and therefore the safety of the accused was not guaranteed.
10. The probation officer therefore urged this Court to withhold the release of the accused on bond until the home environment improves and the accused's safety can be assured.
11. 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 are compelling reasons not to grant the accused person bail.
12. 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."
13. 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.
14. 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."
15. In the instant matter, I have taken cognisance of the fact that the prosecution is not opposed to the application for bail, however, the pre bail report is unfavourable.
16. In the circumstances, I find that there is a compelling reason not to admit the accused to bond, primarily that the safety and wellbeing of the accused would be compromised as the prevailing home environment is hostile. Therefore, the instant application for bond pending trial is hereby dismissed. The Accused is at liberty to renew the Application for bail after the lapse of three (3) months from the date hereof.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 21ST DAY OF MAY, 2024.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Miss Chomba

Accused – Present in Person



No Appearance for Miss Mokoit for the Accused

