



**Republic v Simon & 5 others (Criminal Case E025 of 2023)
[2024] KEHC 4779 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E025 OF 2023**

RB NGETICH, J

MAY 9, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

EVANS CHEROGONY SIMON 1ST ACCUSED

COLLINS CHEBOR KIBOWEN 2ND ACCUSED

DUNCAN KIPCHUMBA CHEPTUMO 3RD ACCUSED

EVANS KIPROP KOMEN 4TH ACCUSED

COLLINS CHEPTARUS KIPRUTO 5TH ACCUSED

DISMAS KIBICHI BARGATAN 6TH ACCUSED

RULING

1. The accused persons herein have been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused persons on the 18th day of October,2023 at Katimok forest of Ossen Location in Baringo North Sub- County within Baringo County, murdered Mary Cherop.
2. On the 28th November, 2023, the charge and its full particulars were read over and explained to the accused persons who all denied the charge and a plea of not guilty was entered. The accused persons through their advocate on record applied to be released on bond. The court delivered a ruling declining to release the accused persons on bond with leave to reapply at a later stage of trial if circumstances change.



3. Afterwitnesses had testified, the accused persons reapplied for bond and the court called for prebail report to assist court ascertained whether there still exist any compelling reason to deny accused persons bond.

Presentence Report

4. From the report all the accused persons are ready to provide security and promise to attend court when required. The family of the victim is still bitter towards the accused persons and they still oppose the accused persons being admitted on bond terms. They hold on to their earlier sentiments that the accused persons should face trial while in custody.
5. The local administration indicated that there is still much tension on the ground due to public interest and they cannot guarantee the safety of the accused persons if they are released on bond especially since the family of the victim is still very bitter towards the accused persons. They are of the view that they should remain in custody unstill such a time it is completely safe for them to return to the community.
6. The area pastor on his part stated that the community is still in shock over the incident but as the clergy they have planned to have prayers at the crime scene on the 10th of April to cleanse the scene and maybe after the cleansing with time the tension in the community and the hostility towards the accused person may subside but for now, he believes the accused persons should stay in custody for a while longer.
7. The probation officer indicated that the accused persons are ready to provide security but from members of the community who were close to the victim. The local administration, village elder and local pastor all believe that the safety of the accused persons cannot be guaranteed and is of the view that the accused persons remain in custody until tension and hostility towards accused persons subside.
8. Similar finding were reported in respect to all three accused persons.

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 that:

“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. Moreover, 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. For example, accused persons should not be subject to the same rules and regulations as convicts.
11. 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.
12. 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.
13. I have considered the sentiments of the local administration, the community, the local pastor and victim's family which confirm that there is tension on the ground and in my view, the accused persons' security is not guaranteed due to hostility towards them that still exist. Even though the accused persons are ready to provide security to attend court, it will be in the interest of justice to protect them from harm while the case is proceeding. In view of the above, I find that it is still not safe to release the accused persons on bond at this stage of trial. I will however direct that this case proceeds for hearing on priority basis and if circumstances on the ground change, this court will reconsider the accused persons prayer for bond.
14. **Final Orders:** -
- 1. I hereby decline to release accused persons on bond.
 - 2. The accused persons application may be reconsidered at a later date if circumstances change.
 - 3. Hearing to proceed on priority basis.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 9TH DAY OF MAY 2024.

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RACHEL NGETICH
JUDGE

In the presence of:

Elvis/Momanyi – Court Assistants.

Ms. Ratemo for State.

Accused 1 – Accused 6 present.

Ms. Mokoit for 6th Accused.



Ms. Kogo for Accused 1 – Accused 5.

