



**Republic v Cherutich & 3 others (Criminal Case E005 of 2024)
[2024] KEHC 7354 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E005 OF 2024
RB NGETICH, J
JUNE 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EZEKIEL KIPKOECH CHERUTICH 1ST ACCUSED

ALEX KIPKORIR KOECK 2ND ACCUSED

SHADRAK KIBET KOECH 3RD ACCUSED

ELIJA KIPCHIRCHIR LAGAT 4TH ACCUSED

RULING

1. The 4 accused persons herein have been jointly charged with counts of offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars to Count I are that on the 15th day of April, 2024 at Emom location, Koibatek Sub-county within Baringo central in Baringo county Accused 1 and Accused 2 jointly murdered one Richard Chumba.
2. The particulars to Count II are that on the 15th day of April, 2024 at Emom location, Koibatek sub-county within Baringo central in Baringo county Accused 1, 2, 3 and 4 jointly murdered one Patrick Komen.
3. Each accused person pleaded not guilty to the charge and the prosecution did not oppose the accused being released on bond. The court called for a pre-bail report to be filed to assist the court in determining bond. On the 8th May, 2024, the pre-bail reports for each accused person were filed.

Pre-bail Report

4. From the report, families of the two deceased persons are still bitter and are opposed to accused persons being released on bond. They say if released, the accused person’s safety will be at risk.



5. The community members interviewed said the accused persons have been troublesome in the community for a long time and if released, their safety will be at risk; that the community are still hostile towards them.
6. The local administrator confirmed that the community are still very hostile and it will not be safe to release the accused persons. The probation officer's opinion is that the accused persons are not suitable for bond at the moment.

Determination

7. 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.
8. 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; accused persons should not be subject to the same rules and regulations as convicts.
9. 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—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;
should be kept in custody for his own protection.
10. 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.
11. From the sentiments given by the two families of the two deceased persons, community and local administration, the community are still very hostile towards the accused persons and their lives will be at risk if released on bond



12. In view of the above, I find that it would be in the interest of justice to protect the lives of the accused persons. It would be in the accused persons interest to remand them in custody for their own security. They are however at liberty to reapply for bond if circumstances change.

Final Orders:

13.

1. I hereby decline to release accused persons on bond at this stage of trial.
2. The accused persons may re-apply for bond if circumstances change.
3. The case to proceed on priority basis.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 14TH DAY OF JUNE 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Court Assistant: Elvis

Ms. Ratemo for State

No appearance for accused

Accused: present

