



**Republic v Serar (Criminal Case E003 of 2024) [2024] KEHC 7353 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E003 OF 2024  
RB NGETICH, J  
JUNE 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ZAMZAM BASHIR SERAR ..... ACCUSED**

**RULING**

1. The accused Zamzam Bashir Serar has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge were that the accused on the 2<sup>nd</sup> day of April, 2024 at Kanjulul area, in Kiplombe location, Koibatek sub-county within Baringo North murdered one Vincent Kiprotich Cheptirim.
2. The accused 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 11<sup>th</sup> June, 2024 the report was filed.

**Prebail Report**

3. From the report, the accused is aged 27 years old. She was married to the deceased herein and they had one child aged one year 5 months who is currently under the guardianship of the accused's mother. The accused and the deceased had lived as husband and wife for a period of 2 years.
4. The probation officer interviewed the deceased's mother and cousin. The deceased's mother declined to make any comments while the deceased's cousin expressed bitter emotions towards accused; he said they have barely mourned and the issue is still fresh in their minds.
5. The investigating officer is not opposed to accused being released on bond. The local administrator said he knows the accused and her parents and that they have no criminal history. The probation officer's opinion is that the accused is suitable to be granted bond.



## Determination

6. 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.
7. 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.
8. 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—
    - i. the nature or seriousness of the offence;
    - ii. the character, antecedents, associations and community ties of the accused person;
    - iii. the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
    - iv. 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.
9. 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.
10. From the sentiments of the people interviewed, it is only the deceased's cousin who feel that since the incident occurred recently and they are still mourning and are still bitter, the accused should not be granted bond. There is no doubt that close relatives of the deceased will take time to heal and feelings toward accused change. If that were to be a factor to determine whether to allow or deny bond, all accused persons would be denied bond as the departed person's close relatives will definitely be affected negatively following the loss.
11. The investigation officer is not opposed to accused being released on bond which mean it's unlikely that she will interfere with witnesses nor abscond. The local administrator is not also opposed to accused being released on bond. In view of the above, I find that there is no compelling reason to warrant denying accused bond.

## Final Orders:

12. Accused may be released on bond of Kshs 500,000 with one surety of a similar amount.



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

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Court Assistant: Karanja

Ms.Omari for State

Ms. Kusolo holding brief for Mr.Murunga for accused

Accused present

