



**Republic v Chesire (Criminal Case E003 of 2024)  
[2024] KEHC 6725 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6725 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E003 OF 2024  
RB NGETICH, J  
JUNE 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL KAMOI CHESIRE ..... ACCUSED**

**RULING**

1. The accused person 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 22<sup>nd</sup> day of March, 2024 at Heritage near National oil filling station within Kabarnet Township in Baringo County murdered one Sammy Boit Korir.
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 30<sup>th</sup> April, 2024 the report was filed.

**Presentence Report**

3. From the report, the accused is aged 48 years old. The accused’s sister wished the accused be released on bond though the family have no title to deposit as security but their cousin who works in a bank in Nairobi is willing to deposit a log book. He however opposes the proposal of accused staying with him in Nairobi if released on bond.
4. From the report, the accused has another pending case in the lower court where he has been released on cash bail of 10,000/=.
5. The secondary victims being the deceased’s mother, sister and younger brother are all opposed to the accused person being granted bond at this stage of trial as he has not shown any remorse.



6. The local administration noted that the accused person is well known to him, that he has been charged with capital offences before, that he rarely stays at home and there is likelihood of him relocating if released on bond. He is opposed to accused being released on bond.

### **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 of the local administration, the accused's place of abode is not assured. He says the accused rarely stays at home. The accused's sister proposed that the accused stays with his cousin who is willing to stand surety for him in Nairobi. The cousin is however willing to stand surety for accused but he is opposed to accommodating him in Nairobi. In view of the above, the fact that the accused has reoffended while on bond and the fact that the home environment is hostile as the victim's family are still bitter, I am of the view that it is not safe to release accused on bond at this stage of trial.
12. Final Orders:



I decline to released accused on bond.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET  
THIS 6TH DAY OF JUNE 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

CA Elvis.

Ms. Ratemo for state.

Ms. Mokoit for accused.

Accused present.

