



**Republic v Cheruiyot & 3 others (Criminal Case E043 of 2021)
[2024] KEHC 9384 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E043 OF 2021
JK SERGON, J
JULY 25, 2024**

BETWEEN

REPUBLIC RESPONDENT

AND

DENNIS CHERUIYOT 1ST APPLICANT

ALICE CHEPNGETICH MALIT 2ND APPLICANT

JAPHET KIPNGENO BETT 3RD APPLICANT

PATRICK KIPLANGAT 4TH APPLICANT

RULING

1. Dennis Cheruiyot, Alice Chepngetich Malit, Japhet Kipngeno Bett and Patrick Kiplangat the Accused and Applicants herein are before this Court to face a charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offence are that on the night of 4th May, 2021 and 5th May, 2021 at Torit Village, Kaptoboit Location of Belgut Sub-County within Kericho County, jointly with others not before court the Accused murdered Samson Kibet Malit The Accused pleaded not guilty to the offence.
3. The Accused through their Advocate on record, applied to this Court to be released on reasonable bail terms, however, the same was declined by this court vide a ruling dated 1st July, 2022 solely because the pre bail reports were unfavourable and revealed that their safety was at stake.
4. The Accused through Mr. Kirui, their advocate on record, have moved this Court seeking to be admitted to bail as the circumstances have changed and that the main ground for denial of bond was hostility from the community.



5. Miss Chepchumba, holding brief for Mr. Kurgat counsel on record for the victim's family, opposed the application for bail as the circumstances have not changed.
6. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecutions stated that the circumstances have not not changed and proposed that the bail application be deferred until some witnesses have testified and/or until the plea bargaining agreement was in effect.
7. The County Probation Officer was directed to file a Pre-bail Probation Reports to enable this Court consider the application for bail afresh.
8. The county probation officer filed a pre bail report, in the said report, it is noted that the Dennis Cheruiyot, the 1st accused, a son to the deceased, comes from a humble background, his parents experienced marital challenges and therefore accused did not enjoy a cordial relationship in the family, hence, the accused's elder sister was strongly opposed to the accused's release on bond whereas some of the paternal family members and maternal uncles were of the opinion that time had lapsed and the accused can be released on bond to allow for reconciliation in the family and to enhance co-existence in the family. The accused was well known to the local administrator, he did not have a history of criminality in the community or have antisocial tendencies. Some of the community members were agreeable to his release on bond. The accused has a fixed abode and had expressed willingness to abide by the bond terms, he would not jeopardise justice or interfere with the witnesses. The accused's relatives and community members were willing and ready to deposit the necessary requisite security. The probation officer, therefore recommended that the 1st accused be released on bond and that this Court afford the family members a chance to deposit the requisite security.
9. The county probation officer filed a pre bail report, in respect of Alice Chepngetich Malit, the 2nd accused, wife to the deceased, the inquiry revealed that the family was divided over the issue of the accused being released on bond, the accused's eldest daughter who is said to have had an acrimonious and or tumultuous relationship with the 2nd accused, was strongly opposed to the accused's release on bond, however, the extended family, the paternal and maternal family members were of the opinion that the accused has been in remand since 2021 and were desirous to have the accused considered for bond as the parties work toward the conducting reconciliation and promoting peaceful co-existence within the home. The accused was well known to the local administrator, she did not have a history of criminality in the community or have antisocial tendencies and that this was an isolated occurrence. The accused has a fixed abode and had expressed willingness to abide by the bond terms, she would not jeopardise justice or interfere with the witnesses. The accused's relatives and extended family members were willing and ready to provide a surety to deposit the necessary documentation. The probation officer noted that the tension within the community had subsided and the extended family members were willing to foster reconciliation within the immediate family. The probation officer therefore found that the 2nd accused was suitable for bond as there was no compelling reason to deny her the same.
10. The county probation officer filed a pre bail report, in the said report, it is noted that the Japhet Kipngeno Bett, the 3rd accused, a son to the deceased, comes from a humble background, his parents experienced marital challenges and therefore accused did not enjoy a cordial relationship in the family, hence, the accused's elder sister was strongly opposed to the accused's release on bond whereas some of the paternal family members and maternal uncles were of the opinion that time had lapsed and it was prudent to work on the family reconciliation, promotion of peace and foster co-existence in the family. The accused was well known to the local administrator, he did not have a history of criminality in the community or have antisocial tendencies. The accused has a fixed abode and had expressed willingness to abide by the bond terms, maintain peace while he pursues justice in this court, he would



not jeopardise justice or interfere with the witnesses. The accused's relatives and community members were willing and ready to deposit the necessary requisite security to secure his release on bond. The probation officer, stated that there was no compelling reason for the court to withhold the accused's release on bond, he therefore recommended the 3rd accused be released on bond and that this Court afford the family members a chance to deposit the requisite security.

11. The county probation officer filed a pre bail report, in the said report, it is noted that the Patrick Kiplangat, the 4th accused, a son to the deceased, comes from a humble background, his parents experienced marital challenges and therefore accused did not enjoy a cordial relationship in the family, hence, the accused's elder sister was strongly opposed to the accused's release on bond whereas some of the paternal family members and maternal uncles were of the opinion that time had lapsed and the accused can be released on bond to allow for reconciliation in the family and to enhance co-existence in the family. The accused was well known to the local administrator, he did not have a history of criminality in the community or have antisocial tendencies or associated with individuals of questionable behaviour in the community. The community members were agreeable to his release on bond, the local administrator reported that there was no animosity among the villagers against the accused upon his release on bail. The accused has a fixed abode and had expressed willingness to abide by the bond terms, he promised to maintain peace at home while he pursues justice in this court, he would not jeopardise justice or interfere with the witnesses. The accused's relatives and community members were willing and ready to deposit the necessary requisite security for his release on bond. The probation officer stated there was no compelling reason for this court to withhold the release of the accused on bond. He therefore recommended that the 4th accused be released on bond and that this Court afford the family members a chance to deposit the requisite security.
12. 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 is a compelling reason not to grant the accused person bail.
13. 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.
14. 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.
15. 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." the [Constitution](#) does not define the term "compelling reasons". However, there are several High Court cases that have deconstructed the phrase "compelling reasons" in [Republic v Joktan Mayende & 4 Others](#) Bungoma High Court Criminal Case No. 55 of 2009, the court defined the term "compelling reasons" as follows: "The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the [Constitution](#)."
16. In the instant matter, I have taken cognizance of the fact that the victim's counsel and prosecution were opposed to the application for bond citing hostility on the ground with respect, I am convinced by the submissions of the Learned Senior Assistant Director of Public Prosecutions that circumstances have



not changed in that there is still hostility hence the security of the Accused Persons is not guaranteed.
This is a compelling reason which makes this court not to admit the Accused Persons to bail

17. The Application for bail is declined. The Accused Persons are at liberty to re-apply for bail after the lapse of four (4) months.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF JULY, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

Accused – Present in Person

No Appearance for Kirui for the Accused

