



**Republic v Mosin (Criminal Case E008 of 2023)
[2023] KEHC 18889 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E008 OF 2023
RB NGETICH, J
JUNE 15, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MUSA CHEBOSKWONY MOSIN 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*. Particulars of the charge being that the accused on 19th and 20th Day of November, 2022 at Kiptombes shopping centre of Mochongoi Ward in Marigat Sub-county within Baringo County murdered Jonathan Kiplagat Kipserich.
2. On the May 22, 2023 the charge and its full particulars were read over to the accused person. He denied the charge and a plea of not guilty was entered. The state counsel informed the court they were not opposed to the accused being released on bond and the court made an order that a pre-bail report to assist the court in determination bond terms. The pre- bail report was filed on June 9, 2023.
3. From the report, the local administration through the area assistant chief indicated that he has made effort to reconcile the two families after the incident but process has not been successful since the deceased family are still bitter and needs time to heal. He is of the view that the accused remain in custody during trial.
4. The deceased's father vehemently opposed the release of the accused on bond on ground that they are yet to come to terms with the loss of their son and feels that accused should remain in custody during trial.
5. The accused's father expressed his reservations over the accused's safety should he be released on bond at the moment. He stated that although they are in a position to bail him out, they feel that due to the



open animosity from the deceased's kin, the safety of the accused is not guaranteed; he opined that the accused should face remain in custody until such a time that the circumstances change.

6. The probation officer's recommendation is for accused to remain in custody due to animosity from accused's neighbors and family of the deceased.

Determination

7. Under Article 49(1)(h) of the *Constitution*, an accused person has a right to be released on bond pending trial unless there are compelling reasons to deny bond.
8. Section 123A of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya provide circumstances the court is required to consider while making determination on bond as follows:-
 - 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;
9. The court is further required to consider the following: -
 - a) Whether the accused 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.
10. Under Bail and Bond Policy Guidelines Paragraph 4.9 the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. Of relevance in this case among the factors to consider under bail and bond guidelines is Protection of the accused persons.
11. There is no doubt that the accused is presumed innocent until proved guilty as provide by Articles 50 (2) of the *Constitution*. However, from the report herein, the accused's family and the local administration are fearful that the security of the accused may not be guaranteed at this stage of trial due to hostility from the family of the deceased and neighbors. In my view it will not be safe to release the accused on bond. It will be appropriate for accused to remain in custody but may be released if circumstances on the ground change.
12. Final Orders
 - 1) Application for bond is declined.
 - 2) Accused may renew bond application in the event circumstances change.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET

THIS 15TH DAY OF JUNE 2023.

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RACHEL NGETICH

JUDGE



In the presence of:

Mr. Kemboi - Court Assistant.

Mr. Abwajo for state.

Advocate - Absent.

