



**Republic v Kiptoo (Criminal Case E008 of 2022)
[2024] KEHC 12406 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E008 OF 2022
JK SERGON, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC REPUBLIC

AND

TONNY KIPTOO APPLICANT

RULING

1. Tony Kiptoo the Accused and Applicant herein is 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, 2022 at Keben Secondary School, in Belgut Sub-County within Kericho County, the Accused murdered Irene Chelangat. The Accused pleaded not guilty to the offence.
3. The Accused through his 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 11th November, 2022 solely because the pre bail report was unfavorable and revealed that the applicant’s safety was at stake as angry students wanted to lynch him.
4. The Accused through Mr. J.K. Mitey, Learned advocate for the Accused moved this Court seeking to be admitted to bail as the applicant would not interfere with witnesses who has since then left Keben Secondary School.
5. Mr. Timothy Musyoki, Learned Senior Assistant Director of Public Prosecution stated that the circumstances have not changed and therefore opposed the application for bail as the accused would interfere with witnesses and that the community was still hostile. Mr. Mitey retorted that there is no evidence that the community is still hostile.



6. The County Probation Officer was directed to file a Pre-bail Probation Reports to enable this Court consider the application for bail afresh.
7. The county probation officer filed a pre bail report, in the said report, it is noted that the accused was a form three student when the incident occurred, which captured the attention of the media and resulted in public outcry as the offence took place in a school set up. The accused has a history of attempted suicide. The accused's family urged this court to release the accused on bond, they promised to move the accused to a safe haven away from any attack and possible stigma in the community and ensure that he attends court hearings.
8. The family of the deceased is yet to come to terms with the demise of their kin. They are opposed to the accused being released on bail, their views sounded threat of attack to the accused in case he is released back home, which could compromise the accused's safety in the village, however, the family did not give any compelling reason as to why the accused cannot benefit from the right to be released on bond. The probation officer noted that the home environment is not safe enough to accommodate the accused.
9. The community and local administrator were not opposed to the accused being released on bond, however, they advised the accused's family to ensure that he is relocated to a safe haven in the pendency of the court proceedings.
10. The probation officer noted that the accused did not pose any danger to witnesses or jeopardise justice. The accused is a young person deserving of a chance to continue with his education while he pursues justice.
11. The probation officer, having considered the findings of the social inquiry, found no compelling reason to deny the accused bond on condition that the family moves him to a safe haven away from the village with an assurance to this court that they will ensure he receives counselling while attending court proceedings.
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 prosecution are opposed to the application for bond citing hostility on the ground and interference with witnesses. However, the probation officer prepared a pre bail report in respect to the accused and noted that there is no compelling reason not to grant the accused bail. In the current circumstances, I therefore find that there are no compelling to deny the accused to bail.
17. I hereby order that the Accused Namely:- Tonny Kiptoo be admitted to bond. He should be released from custody pending trial upon him executing a bond of Kshs.200,000/= with one surety of like sum.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF OCTOBER, 2024.

J.K. SERGON

JUDGE

In the Presence of

C/Assistant – Rutoh

Prosecutor – Musyoki

Accused – Present in Person

J. K. Mitey for the Accused

