



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 24 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JOSIAH KEITANY CHELIMO.....ACCUSED

RULING

1. The accused prays to be admitted to bail pending trial. On 23rd November 2015, the court directed that a *pre-bail report* be furnished by the Probation Service. The report was filed on 14th December 2015.
2. The State opposes the application. The learned Prosecution Counsel submitted that the report does not capture the views of the victim's family. On 23rd March 2016, I called for a further report covering those aspects. It was not forthcoming. At the next hearing on 19th April 2016, and in the interests of justice, I asked both counsel to make submissions on the application for bail. The Republic maintained its earlier position. Learned counsel for the accused submitted that the report was favourable to the accused; and, that there were no compelling reasons to deny the accused bail.
3. I have considered the *pre-bail report* and the rival submissions. The accused faces a grave charge of murder; but he is still deemed to be *innocent* until proved guilty. The sentence for murder is death. Under Article 49 (1) (h) of the Constitution, he is entitled to bail pending trial unless there are compelling reasons. See *Republic v Daniel Musyoka Muasya and others*, Mombasa, High Court Criminal Case 42 of 2009 [2010] eKLR, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported), *Republic v John Mwenya Chumbe*, Eldoret, High Court Criminal Case 47 of 2014 (unreported), *Republic v Evans Kiprono Yegon*, Kericho, High Court Criminal Cases 38 & 40 of 2014 [2015] eKLR, *Republic v Prosper Mutua Nzilani*, Nairobi, High Court Criminal Case 15 of 2013 [2014] eKLR, *Republic v Caleb Oluoch Were & 2 others*, Eldoret High Court Criminal Case 36 of 2008 [2011] eKLR, *Republic v Ali Mcheni Ali* Mombasa High Court Criminal Case 7 of 2011 [2011] eKLR.
4. 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 possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
5. The accused is charged for the unlawful killing of *Isaac Kipyekomen Chirchir*. I cannot prejudge the matter. But I note that the Republic has *not* filed any replying affidavit *contesting* the release of the accused; or, showing any *compelling* ground for denial of bail. In the opinion of the Probation Service the accused has a fixed abode; the home environment is conducive; and, the local administration has no objection to his release.
6. True, the report is silent on the views of the family of the *victim*. The Victims Protection Act 2014 requires the views of victim's family to be taken into account. But the social report states that "*the*

accused and deceased are cousins". It can only mean that the community members interviewed by the probation officer were speaking about the same family and home environment. Like I have stated, the social report states there is no hostility at the *locus in quo*. I will accordingly exercise my *discretion* in favour of the accused.

7. I am however minded to grant bail under strict *conditions* to ensure that the accused *attends* to his trial; and, that he does not *interfere* with witnesses or evidence. The accused shall be released upon execution of a bond in the sum of *Kshs 500,000* together with *one* surety of a similar amount. The surety shall be *examined* and approved by the Deputy Registrar of this Court. As a *condition* for bail, the accused shall *not* have any *direct or indirect* contact with the *eleven* witnesses named on the reverse of the *information* charging him with murder. As a *further condition*, the accused shall, upon his release on bail, report *once every month* to the investigating officer of this case until the conclusion of the trial or further orders of this Court.
8. In default of any of the conditions above, the bond shall stand cancelled and the surety called to account.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 12th day of May 2016.

GEORGE KANYI KIMONDO

JUDGE

Ruling read at in open court in the presence of:-

Accused.

Mr. Tarus for the accused.

Ms. B. Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.