



**Cheruiyot & 3 others v Republic (Criminal Case E043 of 2021)
[2025] KEHC 13619 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E043 OF 2021
JK SERGON, J
OCTOBER 2, 2025**

BETWEEN

**DENNIS CHERUIYOT 1ST ACCUSED
ALICE CHEPNGETICH MALIT 2ND ACCUSED
JAPHET KIPNGENO BETT 3RD ACCUSED
PATRICK KIPLANGAT 4TH ACCUSED**

AND

REPUBLIC PROSECUTION

RULING

1. The quartet Namely:- Dennis Cheruiyot, Alice Chepngetich Malit, Japhet Kipngeno Bett and Patrick Kiplangat are before this Court on trial on the information of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offence are that in the nights of 4th and 5th May, 2021, at Torit Village, Kaptoboiti Location of Belgut Sub-County within Kericho County, the quartet jointly with others not before Court murdered Samson Kibet Malit.
3. The Applicants sought to be admitted to bail/bond pending trial vide the Application dated 24th June, 2021. That Application was heard and dismissed on 1st July, 2022 on the basis that the safety of the Accused Persons was at stake.
4. The Applicants further filed another Application also seeking to be admitted to bail pending trial.
5. This Court vide its Ruling of 25th July, 2024 dismissed the Application on the basis that there was hostility on the ground hence the Applicants' security was not guaranteed.



6. Being undeterred, the applicants have now filed the Application dated 4th March, 2025 whereof they again sought to be released on bond/bail pending trial. The Application is the subject matter of this ruling. The application is supported by the Affidavit sworn by Dennis Cheruiyot, the 1st Applicant herein.
7. The victim's family opposed the Application and relied on the Replying Affidavit sworn by Sally Chepngeno. Counsels appearing for the Prosecution and the Defence plus the victim made oral submissions.
8. I have considered the material placed before this Court plus the rival oral submissions. It is the submissions of the Applicants that there are no compelling reasons to make this Court deny them the right to be admitted to bail. They averred that tension within the community has reduced and that there is no hostility anymore.
9. Mr. Kirui, Learned Advocate for the Applicants argued that since all the prosecution witnesses have testified, it cannot be said that the applicants will interfere with witnesses. The Learned Advocate further pointed out that the latest pre-bail report is favourable.
10. Mr. Nyadimo who appeared alongside Mr. Kirui for the applicants urged this Court find that there are no compelling reasons to continue keeping the Applicants in remand pending trial. Mr. Nyadimo pointed out that the applicants are not a flight risk.
11. Miss Maundu, Learned Assistant Director of Public Prosecutions opposed the Application arguing that though the witnesses have testified, they are still apprehensive of their security. She argued that the threat of security of witnesses does not lapse after they have testified. It was pointed out that there are real threats from the Applicants directed against the witnesses.
12. Collins Cheruiyot, the Investigating Officer swore an Affidavit to oppose the Application. He averred that there exist a history of family conflict and hostility between the witnesses and the Accused Persons giving rise to a real and credible apprehension that if the Applicants are released on bond, they are likely to interfere and intimidate the witnesses who are members of the same family with the Applicants. It was pointed out that the minor witnesses and emotional welfare would be jeopardized by any form of contact with the applicants.
13. The Investigating Officer further averred that given the strength of evidence already adduced, the Accused Persons have a strong incentive to abscond or obstruct the court of justice if admitted to bail. This Court was urged to deny the Applicants bail to avoid unnecessary disruption at this final state of the case.
14. Mr. Kurgat who appeared watching brief for the victim's family relied on the Replying Affidavit sworn by Sally Chepngeno to oppose the Application for bail. She averred that there exists a real and credible apprehension that if the applicants are released on bail/bond, they are likely to threaten, harm the said witnesses and other family members thereby interfering with due administration of justice. Sally Chepngeno also stated that some of the witnesses have received threats from the applicants from Prison which have been communicated through various means thereby instilling fear and distress to the witnesses.
15. Mr. Kurgat also relied on decided cases which were set out on the case digest he filed.
16. Having considered the rival submissions, it is not in dispute that the constitutional right to bail/bond is not absolute. The right to bail is subject to compelling reasons as espoused Under Article 49 (1) (h) of the Constitution of Kenya. Section 123A of the Criminal Procedure Code specifies relevant factors



that would be considered in refusing bail to wit *inter alia*: seriousness of the offence, potential flight risk, interference with witnesses and strength of evidence.

17. In determining an Application for bail, the Court is bound to balance the Accused's right to liberty and the need for justice. The Court will deny the Accused the right to bail when compelling reasons are satisfactorily demonstrated.
18. In the instant Application, the Prosecution have demonstrated that though the witnesses have testified, they are still apprehensive of their security. It is also stated that the applicants have issued threats directed at the witnesses from Prison through various methods. It is also pointed out that vulnerable witnesses particularly minors are exposed to danger or harm by the applicants if they are released on bond/bail.
19. It is important to note that the Applicants did not deny the assertions that they issued threats while in remand in Prison. The only serious argument put forward by the applicants is that the witnesses have already testified hence there is no way they can interfere with the witnesses. This is convinced by the arguments put forward by the victims and the prosecution that there are real threats and danger to the witnesses if the Applicants are released on bond/bail. This Court is also satisfied that the threats and dangers to witnesses do not end upon the witnesses completing to testify.
20. In the end, I am convinced that the Prosecution have laid out compelling reasons necessitating this Court to deny the Applicants bail.
21. Consequently, the application for bail dated 4th March, 2025 is found to be without merit. It is dismissed, therefore the Applicants are denied bail/bond pending trial.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 2ND DAY OF OCTOBER, 2025.

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor – Maundu

Accused – Present in Prison.

Nyadimo & Kirui for Accused

