

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO E020 OF 2025

REPUBLIC.....
PROSECUTOR

VERSUS

BENJAMIN
KIPCHUMBA.....ACCUSED/APPLICANT

Coram: Before Justice R. Nyakundi
M/s Rioba Omboto & Co. Advocates
M/s Sidi Kirenge for the State

RULING

1. Before this court is a Notice of Motion Application dated 3rd February 2026 bond under Article 49(1)(H) of the constitution as read with Section 123 & 123(a) of the Criminal Procedure Code. The applicant in this matter was arraigned before this court charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that; on the 9th day of November 2025 at Sambut location, Turbo Sub County within Uasin Gishu County unlawfully and with malice aforethought murdered Billy Ndiwa. The applicant pleaded not guilty of the offence and put the State in its defense to disapprove his innocence beyond reasonable doubt.
2. In the quest of this application the pre-bail report dated 22nd January 2026 was availed and within that inquiry the following data and content upon the applicant was recorded by the probation officer:

INTRODUCTION AND SOURCES OF INFORMATION

This is a bail assessment report in respect of Benjamin Kipchumba, charged with the murder of Billy Ndiwa. This reports is prepared pursuant

to the court's order for a bail assessment report on 16th December 2025 to assist in determining his suitability for bond/bail. It is based on interviews with the accused, his Relatives, community members at his home village and at his place of residence, the victim's relatives, the chief, security agencies and the perusal of relevant court documents.

FAMILY BACKGROUND

The accused is the firstborn son of the late Hellen Chepchirchir, who was a single mother and was never married. He has two younger siblings: Moses Kipruto, who engages in casual employment in Eldoret town, and Daniel Kipkosgei, who is a secondary school student. The two siblings have been raised in a children's home while the accused was raised by his maternal grandmother. The accused dropped out of school at primary standard four. He has been residing in Turbo Sub-County, where he stays with his maternal uncles until the time of his arrest. Despite the absence of a nuclear family setup, the accused has benefited from support from his grandmother maternal uncles. Although the uncles are of low socio-economic means, they have maintained close family ties, live peacefully, and have no known history of criminal involvement. The relatives demonstrated commitment and concern for the accused and expressed their willingness to continue supporting him. They have vouched for his release on bond. Overall, while the accused's upbringing was marked by family vulnerability and orphan hood, his extended family has stepped in to provide a defined home environment and constitutes his immediate and reliable social support system.

PERSONAL HISTORY

The accused was born in 1998 in the Jua Kali area. He attended Chuiyat Primary School and completed but dropped out in standard four in the year 2011. From 2013, he has engaged in casual employment, primarily working as a farmhand on a dairy farm, where he was employed up to the time of his arrest and subsequent remand. He resides in Kamagut

Location at his maternal grandparents' home, occupying a house that belonged to his late grandfather. He does not own land or any registered property. The accused is not formally married but was in a stable relationship with Faith Chelagat, with whom he has one child aged three years. He is reported to be in stable health, with no known history or observations of drug or substance use or abuse. Overall, the accused is a young man of limited formal education whose livelihood has largely depended on casual labour. His personal history does not reveal any adverse character traits or behavioral concerns.

DRUGS AND SUBSTANCES

The accused reported that he consumes alcohol before his arrest. He has not reported any problems associated with drug use.

PREVIOUS ADHERENCE TO BOND/LICENSE TERMS

The accused has no record of previous bond/bail granted.

SERIOUSNESS OF THE OFFENCE

The accused understands the seriousness of the offense. Responses during the inquiry reflected an appreciation of the weight of the charges he is facing.

VICTIM'S CONCERNS

The deceased Billy Ndiwa was aged 27 years. He was doing casual works in jua kali area to earn a living. The deceased was married and his spouse was at his home village in Kaptama location in Kapsokwony sub-county, Bungoma County. The views of the victim's family were conveyed by Pastor Martin Ndiwa, who was the deceased's guardian and with whom the deceased had lived with since the year 2014. The family is deeply aggrieved by the loss of their kin, whose life they state was prematurely cut short under circumstances they are yet to fully comprehend. They described the deceased as a hardworking and responsible young man who supported members of his extended family through his earnings from casual employment. The deceased was buried on 20th November at his

home village in Kapsokwony sub-county. According to the family spokesperson, the family's attitude remains moderate despite the profound loss, and they have expressed hope that justice will be served. They did not raise any objections to bond to the accused person. However, the family holds the view that there may have been additional suspects involved in the incident.

COMMUNITY TIES

Community members from the accused person's area of residence described him as hardworking, and he is well known within the community. Despite the seriousness of the charges, he continues to enjoy a reasonable level of social support from local residents. Both the accused and his family are well known in the area. Prior to his arrest, he was employed at a dairy farm located within the same community. The community members demonstrated an informed understanding of the circumstances surrounding the alleged offence and did not express any concerns regarding their safety of the accused or the likelihood of interference with witnesses in the event the accused is released. There were no indications of hostility or tension directed towards the accused, and the prevailing community attitude was largely neutral, with a general view that the matter should be allowed to proceed through the due process of the court. Furthermore, no previous history of misconduct or problematic behaviour by the accused within the community was reported

BAIL/BOND SURETIES AND SECURITIES

The accused prays to be considered for release on bond. His relatives have identified a surety, Timothy Kiplagat, who has a valid title deed that maybe used as a security. The proposed surety is his employer and he was working for him prior to arrest.

CONCLUSION

Your Lordship, the accused person is a young man aged 27 years who was raised by a single mother. Prior to his arrest, he was engaged in casual

employment as a farmhand. Although the accused does not have a nuclear family set-up of his own, he benefits from a supportive extended family network, particularly his grandmother and maternal uncles. The family gave a positive assessment of his character, describing him as responsible and of good conduct, with no known prior criminal record. They have expressed willingness to support him throughout the court process and have identified a suitable surety with a land title deed. The victim's family did not raise any objections or concerns regarding the accused person's release on bond. They indicated that there is no existing hostility, threats, or ongoing disputes between the two families that would pose a risk to peace or order. Similarly, views gathered from the community did not reveal any concerns relating to public safety, retaliation, or intimidation of witnesses following the incident or the arrest of the accused. While the community acknowledges the seriousness and gravity of the offence and is aware of the accused's alleged involvement, no signs of tension, hostility, or animosity were reported during the assessment. In conclusion, notwithstanding the seriousness of the offence before the court, the social inquiry did not find any compelling factors that would necessitate the denial of bond at this time of trial. The accused demonstrates stable social ties through his extended family and community, and he has no adverse antecedents, and enjoys both family and community support.

RECOMMENDATION

Your Lordship, the social inquiry revealed no objections from the victim's family regarding the accused person's release on bond. The accused person's family has demonstrated support and readiness to ensure compliance with court requirements. As such, there are no compelling reasons established to warrant denial of bond at this stage. The Honourable Court may therefore consider granting bond on reasonable and proportionate terms.

3. In addition, the applicant's application is also supported by an affidavit of one Timothy Kipchirchir who is the proposed surety. He deponed as follows:
- a. *That I am the proposed surety for Benjamin Kipchumba in the above-mentioned matter.*
 - b. *That I am a Kenyan citizen and currently reside in Sambut village within Uasin Gishu County.*
 - c. *That I understand the nature of the obligation I am undertaking as a surety for Benjamin Kipchumba which involves guaranteeing that he shall appear in court when called upon or when the matter is in court.*
 - d. *That I understand that if the accused fails to fulfill the said obligation, I may be held liable.*
 - e. *That my motivation for acting as a surety for the accused stems from the fact that the accused is a trusted employee of mine. He is employed as a night guard at my farm in Sambut area.*
 - f. *That from the working relationship with the accused, I have always known him to be trustworthy and honest and as such, I have full confidence in his commitment to appear in court. Further, I believe in his innocence and ability to rectify the situation at hand.*
 - g. *That from the working relationship, I have been able to know the accused's character and I guarantee the ability to fulfill his obligations as required.*
 - h. *That I guarantee I am the owner of land parcel PIONEER/RACECOURSE BLOCK2 KAPMALEL/579 measuring approximately 0.09 Ha, which I would wish to pledge the same as security for his bond and confirm that there are no encumbrances on the said asset.*
 - i. *That a valuation of the above mentioned land PIONEER/RACECOURSE BLOCK2 KAPMALEL/579 measuring approximately 0.09 Ha, was done and the estimated current value of the land is Kshs. 3.5 million.*

- j. That I am not acting as surety under any duress, coercion or undue influence as I have made this decision freely and voluntarily.*
- k. That I understand that providing false information in this affidavit has legal consequences upon me.*

Analysis and Determination

4. This forms the evidential material towards the decision making process touching on the application of the applicant. The carrier constitutional imperatives on bail applications is basically the Bill of Rights as interpreted with the provisions of Article 49(1) (H) & 50 of the Constitution. Generally, bail is a constitutional right arising from the presumption of innocence. The guiding principle is that bail should be granted unless there are compelling reasons to be denied.
5. The jurisprudential decisions in Kenya for example **Republic v Ali & 2 Others (2024)**, **Kariuki v Republic (2025)**, **Ademba v Republic (1983) KLR 442**, **Republic vs Ahmad Abolafathi Mohammad & Anor (2013) eKLR**, **Githinji & 2 Others v Republic (2025)**. In the contextual facts of the above case law bail can be denied if the prosecutions prove on a balancing of probabilities that:
 - a. The accused is likely to abscond (fail to attend court)*
 - b. The accused is likely to interfere with witnesses or evidence.*
 - c. The accused is likely to commit further serious offences.*
 - d. The accused is likely to endanger victims or the public.*
 - e. The safety of the accused is threatened.*
6. The other factors to consider guided by section 123(A) of the Criminal Procedure Code include: -
 - a. **Nature/Seriousness of Offense:** While severe charges (e.g., murder) are factored in, they are not an automatic bar to bail.*
 - b. **Strength of Evidence:** If the prosecution's case is weak, the accused should generally be released.*

- c. **Character and Ties:** *The court considers the accused's community ties, character, and residential stability.*
- d. **Previous Conduct:** *The accused's history regarding compliance with previous bail terms.*
7. The primary purpose of the provisions of Article 49(H) of the Constitution is the accused to be granted bail so long as the court can secure his attendance at the trial so as to avoid punishing him/her before conviction. What should be borne in mind is the aspect that bail decisions are also tied to Article 27 of the Constitution on the right to equality.
8. I have carefully considered the application, the supporting affidavit, and the pre-bail inquiry report prepared by the Probation Officer. I find the said report to be comprehensive, responsive and informative. In the absence of any identified risk factors, there exist no compelling reasons to deny the Applicant bail. Consequently, and in the exercise of this Court's discretion, I admit the Applicant to bail in the sum of Kenya Shillings One Million (Kshs. 1,000,000/=) with one surety of a similar amount, to be approved by this Court. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 9TH DAY OF
FEBRUARY 2026**

.....
R. NYAKUNDI
JUDGE