



**Republic v Kibor (Criminal Case E008 of 2025)
[2025] KEHC 7437 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E008 OF 2025
RB NGETICH, J
MAY 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSPHAT KIMUTAI KIBOR ACCUSED

RULING

1. The accused Josphat Kimutai Kibor was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence being that the accused person on the 7th April, 2025, at Kaseret Village of Emom Location in Baringo Central Sub-County, within Baringo County murdered Laban Kipchumba Kibor.
2. On 29th April, 2025, the accused denied the charge and the court called for prebail report to assist in determining bond. The report was filed on 26th May 2025.

Prebail Report

3. From prebail report, the accused’s mother indicated that accused previously served 2 years sentence. The accused is known in the community as brutal and easy to kill. However, there is no history of abusing drugs or jumping bail. The deceased was accused’s brother born after the death of his father and had conflicts over paternity and distribution of family land. Social inquiry revealed that assaulted his mother before he was arrested.
4. The accused’s family members are opposed to accused being granted bond as the memory of death of their brother is still fresh in their mind. Their argument is that if released he is likely to harm family members or be harmed. The uncle is also opposed to distribution of family land with a child born after the death of their father and this incidence has intensified the enmity among the siblings and releasing the accused at the moment will be risking his life especially from his brothers and also from members



of the community. None of the family members is ready to stand surety for accused claiming that he is not only a threat to them but also a flight risk.

5. The area chief stated that the accused is a real trouble in the family and prior to the incident, several cases had been reported and solved at the family level. According to the area chief, the community members are very bitter with accused and if released at this time, there is a likelihood of retaliation. She also stated that the accused is a very brutal person who blatantly refused to be peaceful. She confirmed that there is another matter reported to the police of accused assaulting his mother. She is of the opinion that the bond application be considered after the family cools down to avoid retaliation.

Determination

6. Article 49(1)(h) of the Constitution is explicit that, unless there is some compelling reason, an accused person, be he a citizen or foreigner, ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. It provides that:

“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.”

7. Moreover, by dint of Article 50(2) of the Constitution, every accused person is entitled to the presumption of innocence. The presumption of innocence dictates that accused persons should be released on bail or bond whenever possible. The presumption of innocence also means that pretrial detention should not constitute punishment, and the fact that accused persons are not convicts should be reflected in their treatment and management. For example, accused persons should not be subject to the same rules and regulations as convicts.

8. Accordingly, Section 123A of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, stipulates that:

- (1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (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;
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
 - (a) 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.



9. And, under the Bail and Bond Policy Guidelines, it is restated as a general guideline in Paragraph 4.9 that:

“In terms of substance, the primary factor considered by the courts in bail decision-making is whether the accused person will appear for trial if granted bail. A particular challenge the courts face since the promulgation of the Constitution of 2010 is determining the existence of compelling reasons for denying an accused person bail, particularly in serious offences.”

10. The Guidelines then offer the following non-exhaustive factors for consideration in bail applications:

- (a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.
- (b) The strength of the prosecution case.
- (c) The character and antecedents of the accused person.
- (d) The failure of the accused person to observe bail or bond terms.
- (e) The likelihood of interfering with witnesses.
- (f) The need to protect the victim or victims of the crime.
- (g) The relationship between the accused person and the potential witnesses.
- (h) The best interest of child offenders.
- (i) The accused person is a flight risk.
- (j) Whether the accused person is gainfully employed.
- (k) Public order, peace and security.
- (l) Protection of the accused persons.

11. 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 views of the family of the victim, the possibility of interference with witnesses, the temptation to abscond and the safety of the accused.

12. From the pre-bail report, the deceased is a brother to the accused from another father and the family members are still bitter and are not ready to receive the accused back to the community. This was confirmed by the area chief who indicated that the offence has heightened animosity within accused's family and it would not be safe to release the accused at this time of trial as it would be endangering his life. In view of the sentiments given by accused's family who are also deceased's family and the area chief, it would be in the interest of justice for the accused to remain in custody for his own safety. Accused may however reapply for bond when circumstances change.

Final Orders

13.

1. Accused is denied bond.
2. Accused may reapply bond at later stage of trial when circumstances change.



RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF MAY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Kosgei for State.

Mr. Chebii for Accused.

Accused present.

Elvis/Momanyi – Court Assistants.

