



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. E004 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

KIPNGETICH KIRUI ALIAS PATRICK.....ACCUSED

RULING ON BAIL

1. Kipngetich Kirui alias Patrick (Accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 laws of Kenya. The particulars of the offence are that on the 14th day of September 2020 at Koiwa Shopping Centre in Koiwa location, Konoin Sub County within Bomet County murdered one Peter Kirui alias Leonard.

2. The Accused took plea on 2nd December 2020 and denied the charge. His counsel Mr. Ngeno promptly applied for the accused's release on bond. The court directed that a pre-bail report be filed.

3. I heard the bail application on 16th December 2020. In making the application, Mr. Ngeno submitted that the Accused was entitled to bail under Article 49 (i) (h) of the Constitution. He submitted that according to the pre-bail report, the victims were not opposed to the Accused's release and there were no possible threats against the Accused. Counsel further submitted that the Accused was not a flight risk and that there were no compelling reasons to deny the Accused reasonable bond terms.

4. Mr. Mureithi on his part left the matter to the discretion of the court.

5. I have considered the application. Article 49 (i) (h) of the Constitution 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.”

It is also the duty of the State through the prosecution to demonstrate to the court any compelling reasons. (See ***R Vs. Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008 eKLR***).

6. In ***Antoinette Uwineza alias Michelin Uwababyiji & Anor, Nairobi Criminal Case No. 45 of 2013 eKLR***, this court held thus:-

“The Constitution has however in its wisdom left the task of deciding what constitutes compelling reasons to court so that the court can, taking into consideration the circumstances of each individual case, exercise discretion in granting or refusing to grant bail...”

7. In the present case, the prosecution has not brought forth any compelling reasons. Further the pre-bail report states that there was no likelihood of the Accused facing any threat or hostility from the victim's family or the local community if released. The victim impact statement on the other hand shows that the victim's family was not opposed to the release of the accused on bail. I therefore find no compelling reason to deny the Accused bail.

8. The Accused is released on bail/bond on the following conditions:-

(i) He shall post cash bail of Kshs.500,000/= with one surety of similar amount.

(ii) As an alternative to 1 above, the Accused shall execute a personal bond of Kshs.500,000/= and provide 2 sureties of similar

amount each.

(iii) He shall not interfere with witnesses in any way.

(iv) He shall attend court whenever required and shall not impede the trial in any way.

9. Orders accordingly.

Ruling delivered, dated and signed this 26th day of January, 2021.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Counsel Mr. Ngeno, Mr. Mureithi for the DPP, and Kiprotich (Court Assistant).