



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 17 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

NICHOLAS KIPKEMOI KIRU.....ACCUSED

RULING ON BAIL

1. Nicholas Kipkemoi Kirui (Accused) is facing trial on a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 laws of Kenya. He is alleged to have murdered Benard Kiprotich Ngetich at Kipsigirio village in Toboino sub-location Konoin Sub-County within Bomet County on 10th August, 2020.

2. The Accused took plea on 2nd December 2020 and denied the charge. His counsel Ms. Chepkemoi requested the court to direct the filing of a pre-bail report. During the pre-trial session on 16th December 2020, Mr. Ngeno who held Ms. Chepkemoi's brief made an application for the Accused to be released on bail pending trial.

3. In his submissions, counsel stated that the application was grounded on Article 49 (i) (h) of the Constitution and submitted that it was the Accused's right to be released on bail pending trial. He submitted that there were no compelling reasons for the Accused not to be released. Counsel submitted further that the Accused was not a flight risk and that the pre-bail report was favourable.

4. On his part Mr. Mureithi for the prosecution submitted that the pre-bail report was favourable to the Accused and left the matter to the discretion of the court.

5. The pre-bail report dated 16th December 2020 states that both the deceased and the Accused were friends as well as neighbours. That the incident shocked both families and the local community. That the two families were ready to commence formal traditional reconciliations and were not averse to the Accused being granted bail.

6. I have considered the application. Article 49 (i) (h) of the Constitution which was cited by defence counsel gives all Accused persons the right to bail unless there were compelling reasons. It is now trite that the compelling reasons must be provided by the prosecution.

7. In **R.Vs. Patius Gichobi Njagi & 2 Others, Nairobi High Court Criminal Case No. 45 of 2012 (2013) eKLR**, this court stated thus:-

“The state's duty in bringing forth the compelling reasons was aptly discussed by Ibrahim j (as he then was) in the case of R.Vs. Danson Mgunya and Kassim Sheebwana Mohamed Mombasa Criminal Case No. 26 of 2008 wherein he stated:-

“I do hold that if the prosecutor objects to the release of the Accused during pending of a trial then at the first instance, the burden should be on the prosecution and not the Accused to prove or at least demonstrate the existence of the “Compelling reasons.”

8. In this case, the prosecution has not raised any compelling reasons. As shown above the pre-bail report is favourable to the Accused. Having taken all factors into consideration, I find no compelling reason not to release the accused on bail. He is released 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 Ms. Chepkemoi, Mr. Mureithi for the DPP, and Kiprotich (Court Assistant).