



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 2 OF 2020

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

VERSUS

JOSEPH MAINA WANGAIACCUSED

RULING

The accused herein **JOSEPH MAINA WANGAI** filed this application dated 9.10.2020 seeking basically that he be admitted to bail pending his trial. The same is supported by his own affidavit also sworn on the same date, 9.10.2020. In his submissions, Mr. Kibathi, for the accused stressed that this is the second application for bail filed by the applicant. That the initial application and the ruling on the same denying the accused bond was made before any pre-bail report was filed in court. Counsel maintained that there are no compelling reasons herein. That there is no proof that the applicant is a flight risk not that he has no place of abode or strong family ties. Further, that the allegation that he would interfere with witnesses is equally not proved. He summed up that bail is a constitutional right and the applicant is entitled to the same.

Ms. Kimani, for the state, opposed this application, basically on grounds that the court had vide a ruling made on 5.6.202 denied the applicant bail, and that the applicant has not shown any change in the circumstances of this case as to Warrant a revision of the said orders in favour of the applicant. It was submitted that this is a repetition of the earlier application. Counsel prayed that this application be dismissed.

I have considered the submissions of both counsel for the applicant and of the state. As agreed by the parties during the submissions made, this is the 2nd application for bail made by the applicant herein. The applicant first filed an application dated 18.2.2020 which application was opposed by the prosecution side on at least 3 main grounds. These were;

- **That the applicant is likely to interfere with prosecution witnesses if released on bail.**
- **That he is likely to abscond if released on bail.**
- **That he has no known place of abode.**

This application of the applicant dated 18.2.2020 was heard by the court on merit and in the ruling made on 5.6.2020, the court determined that the prosecution had proved at least 2 compelling reasons that would warrant the denial of bail to the accused i.e that he was likely to abscond and that he also had no known place of abode. In arriving at this decision, the court considered certain material facts that came out during the hearing of the application. First, was the fact that immediately after the incident, the accused (applicant) disappeared, never to be seen again in the vicinity of the alleged crime. The incident was on 23.11.2019 and it was not until 16.12.2019 that the applicant was found and arrested. Second was the fact that the applicant was arrested while sleeping on the streets implying that he had no place of abode.

The applicant has made another application seeking the same prayer and submitting only that bail is a constitutional right which the applicant is entitled to. In the present application, no attempt has been made by the applicant to persuade this court that the 2 factors determined earlier to constitute reasons are not compelling reasons.

The applicant has placed reliance on the pre-bail report filed herein after the initial ruling, on 16.7.2020. I have carefully considered the said pre-bail report. In its critical part, on community ties, the report confirms that the applicant has little or no ties with his mother's village. His place of abode or family ties in Nairobi, also remains unknown.

The sum total of this is that the applicant has not raised any new material circumstances that would persuade this court to rule otherwise and place the accused on bail. This application, being similar to the earlier application already ruled on, therefore lacks any merits. The same is accordingly dismissed.

D. O. OGEMBO

JUDGE

19.1.2021.

COURT:

Ruling read out in court (online) in the presence of Mr. Okeyo for the state, the accused and Mr. Kibathi for the accused.

D. O. OGEMBO

JUDGE

19.1.2021.