



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 79 OF 2020

AMOS KIMATHI MUKANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The principles to be considered on an application for bail pending trial are well settled in law. The right to bail pending trial is recognized under Article 49 of the Constitution of Kenya, and Section 123 of the Criminal Procedure Code. The accused has been charged of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The offence is one of a serious nature attracting a maximum penalty of death. A similar application for bail has previously been denied herein.

2. While this Court is cognizant of the principle that an Accused person has the right to be presumed innocent until proven guilty, the grant of bail pending trial is not automatic, in accordance with Article 49 (1) (h) it may be denied where the prosecution demonstrates compelling reasons for refusal.

3. Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 sets out the judicial policy on bail and bond at page 25 thereof as follows: -

The following procedures should apply to the bail hearing:

(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

a) That the accused person is likely to fail to attend court proceedings; or

b) That the accused person is likely to commit, or abet the commission of, a serious offence; or

c) That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or

d) That the accused person is likely to endanger the safety of victims, individuals or the public; or

e) That the accused person is likely to interfere with witnesses or evidence; or

f) That the accused person is likely to endanger national security; or

g) That it is in the public interest to detain the accused person in custody.

4. It is noted that the accused person faces another charge of attempted murder in Meru CMCCC No. 206/2018, while this is not a reason for denial of bail as the accused is presumed innocent in all cases at all times until he is proved guilty and convicted, it the possibility of multiple penalties in the two cases readily gives the accused an greater incentive to abscond to avoid punishment if eventually found guilty.

5. The pre-bail report by the Probation Office is not positive and it is indicated that 2 of the witnesses in both the case herein and the aforesaid CMCC No. 206/2018 are well known to the accused and are intimidated and threatened by him. One of the witnesses is said to be his girlfriend and/or fiancée who has gone hiding. The other one is said to be the survivor of the attempted murder. The prosecution prays that these two witnesses be allowed to give their evidence before the accused can be released on bail. This Court observes that the survivor is the only eye witness and her evidence is key for the Prosecution.

6. The prosecution also argues that the incident brought a lot of public outrage and it is still fresh in the minds of the members of the public and in order to protect the Accused person himself, he ought not to be released.

7. From the pre-bail report, it further appears that the Accused person is one who keeps to himself and not much is known about him, despite his involvement in politics. He has lived in different locations throughout his childhood and now in his adulthood. He is said to be a flight risk and a threat to some of the witnesses.

8. The Court is alive to the counsel by the Court of Appeal in **Kyalo v. R** (2009) KLR 325, 329 against wholesale acceptance of probation officer's reports on which the accused has not had a chance to cross-examine as a basis of a decision, but coupled with the fact of multiple criminal cases and the incentive this engenders for flight and or motivation to interfere with the key witnesses, and the public outrage at the alleged offence which open the accused to possibility of lynching, the court finds that the grant of bail is not appropriate at this stage. This Court finds the contents of the pre-bail report which do not favour a grant of bail as the Accused is said to be a flight risk as compounding reason for denial of bail.

9. The primary consideration in deciding whether or not to grant bail pending charge or trial is the question of whether the Accused person is likely to attend and/or abscond Court. For the reasons set out above, the court finds that the Prosecution has set out compelling reasons for refusal of bail in the fact that he is a flight risk, there is a likelihood on interfering with witnesses and in order to protect the Accused person himself for his own sake and for the sake of the due administration of justice.

ORDERS

10. Accordingly, this Court makes the following orders:

1. The Applicant's application for bail pending trial dated 8th September 2020 is hereby declined.

2. The applicant may renew his application for bail in the future, in the event of changed circumstances.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF FEBRUARY 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Kiogora Mugambi & Company Associates, Advocates for the Applicant.

Ms. Nandwa, Prosecution Counsel for the Respondent.