



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO E002 OF 2020**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ALIPHONCE KIPLANGAT KIRUI**

**alias JACOB SIELE.....ACCUSED**

**RULING**

1. The accused Alphonse Kiplangat Kirui alias Jacob Siele is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 13<sup>th</sup> day of October 2020 at Chepchabas location, Konoin Sub-County within Bomet County murdered one Geoffrey Siele.
2. The accused took plea on 25<sup>th</sup> February, 2021 and denied the charge. His counsel Mr. Kenduiwo asked the court to direct that a pre-bail assessment report be filed. The report was duly filed on 11<sup>th</sup> March, 2021. When the matter came up for pre-trial directions on 17<sup>th</sup> March, 2021, Mr. Kenduiwo made an oral application for the accused to be released on bail pending trial. In making the application, Mr. Kenduiwo observed that though the pre-bail report was not favourable to the accused, he should none the less be granted reasonable bond terms as he was willing to attend court whenever required.
3. Mr. Murithi for the prosecution opposed the application. He submitted that the pre-bail report was not favourable to the accused and that none of the relatives was willing to stand surety for him.
4. In a brief rejoinder, Mr. Kenduiwo submitted that the court should consider the constitutional rights of the accused. He added that the deceased and accused were brothers.
5. Article 49(i)h of the Constitution grants every suspect or accused person the right to bail unless there were compelling reasons. It is also trite that in exercising discretion to grant or deny bail a court must do so judiciously bearing in mind any relevant facts or circumstances. Such facts or circumstances must pass the test of compelling reasons envisaged under section 49(i) h of the Constitution.
6. In this case, it is the finding of the Court that the accused has the right to bail. It is also not disputed that the prosecution has not demonstrated compelling reasons for denial of bail /bond. I must dismiss the prosecution's only submission that the accused ought not be granted bail or bond for reason that no relative was willing to stand surety for him. I do so because there is no certainty that the accused if granted bond would fail to find sureties other than his immediate relatives. Availability of sureties is not a condition precedent on the grant of bail or bond, but rather a condition to be satisfied upon grant of bail or bond.
7. The pre-bail assessment report confirms that the deceased and the accused were siblings meaning that the accused's parents and siblings were also the victims of the offence. That according to family members, the accused had no previous quarrel with his deceased brother or indeed any other family member. That on the material date, he acted strangely and exhibited violent behaviour. The family therefore was fearful that the accused may harm them if released. They were yet to come to terms with the death of their son and were in agreement that the accused remain in custody to ensure the safety of the other family members.
8. I have taken into consideration the above circumstances as stated in the pre-bail report. I am persuaded not to grant the accused bail at this stage. He shall be at liberty to renew his application once the family members who are witnesses have testified.
9. The accused is denied bail and shall remain in custody.
10. Orders accordingly.

**Ruling delivered, dated and signed at Bomet this 31<sup>st</sup> day of March, 2021.**

.....

**R. LANGAT KORIR**

**JUDGE**

**Ruling delivered in the virtual presence of the Accused, Defence Counsel Mr. Kenduiwo, Mr. Murithi for the DPP and Kiprotich (Court Assistant)**