

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 13 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

SAMWEL KIRUI.....ACCUSED

RULING

1. The Accused Samuel Kirui is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He is alleged to have murdered one Richard Kirui on the 7th July 2018 at Kinyorir village Bomet East, Longisa Division within Bomet County.
2. The Accused took plea on 23rd July 2018 and pleaded not guilty. When the matter came up for trial on 22nd October 2018, Ms. Rotich learned defence told the court that the defence wished to pursue a plea bargain. She sought an adjournment which the court duly granted. The matter has since been adjourned from time to time on the application of both the prosecution and the defence.
3. The Accused now seeks to be released on bail pending either trial or plea agreement. The application was urged by Ms. Chemutai, now on record for the Accused, on 14th April 2021. In urging the application, Ms. Chemutai stated that the pre-bail assessment report was favourable to the Accused and that his relatives were ready to stand surety for him. submitted that the Accused and the deceased were siblings and that there were no compelling reasons to deny him bond.
4. Mr. Muriithi for the Prosecution left the matter to the discretion of the court.
5. On record is a bail information report filed by the Probation Officer dated 7th March 2021. The report confirms that the Accused and the deceased were brothers and that their remaining siblings have forgiven him and were willing to receive him back home and into the community. The report recommends that the Accused be released on bond.
6. I have considered the application. I observe that the prosecution is not opposed to the release of the Accused on bond. I also observe that the Probation Officer's bail information report is favourable to the Accused.
7. In this case however, the record shows that the Prosecution and the defence have been on a never-ending plea negotiation since 2018. It is not clear to the court why the Prosecution has neither accepted nor rejected the plea offer. The Probation Officer's report states that the victim's family and specifically his siblings were willing to have the Accused released on bond. However, the report is silent on whether or not the victim had a family of his own and whether their views were sought. The report is therefore not comprehensive in this respect.
8. Having considered all factors aforesaid, I am disinclined to grant the Accused bond.
9. Further, and in order to expeditiously bring this case to conclusion, I direct the parties to expeditiously conclude their on-going plea negotiations and file a plea agreement (if any) for consideration by the court.
10. The Accused shall remain in custody pending his trial which is now scheduled for 19th and 20th July 2021 or pending conclusion of a plea agreement if elected by the parties.
11. Orders accordingly.

.....
R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Ms. Chemutai, Mr. Muriithi for the DPP, and Kiprotich (Court Assistant).