



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. 4 OF 2020

REPUBLIC

-versus-

KESUUNTU OLE NTIMAMA.....ACCUSED

RULING

Review of denial of Bond

[1] The significant order sought in the Motion dated 15th March 2021 is review of court's decision to deny the applicant bail. From the application, the affidavit in support and the submissions by defence counsel, the applicant seeks to be admitted to bail on the following reasons: -

- a) That there is no compelling reason in the sense of article 49(1)(h) of the Constitution as to deny the accused bail.
- b) That the allegation that the accused threatened the widow is far-fetched and remote. In any case, it was argued that the accused lives in another constituency far away from the place where the widow lives.
- c) That the accused is not a flight-risk as he faithfully attended court when he was erroneously released on bond.
- d) That the consent between the counsel for the victims and defence counsel to deny the accused bail was inconsistent with the constitutional rights of the accused.
- c) That the court has power to redress denial, violation and infringement of right of a person as in this case.
- d) That the court has the power to review of its decision on bail in order to give effect to the right to liberty.

[3] The prosecution and the victim's counsel opposed the application for review. They filed two affidavits; one by LENTITIYIO WOTUNI, the brother of the deceased, and CPL ERIC MUNENE, the Investigations Officer (IO). Reasons advanced in these affidavits and expounded in the oral submissions by the prosecution and victim's counsels crystalizes into these three;

- a) That the accused interfered with witnesses. According to them, after the incident, he visited his farm which adjoins the home of the deceased and caused panic to the widow as to make her to seek shelter in the house of Lentitiyio. And, that the land dispute which was the cause of the death of deceased is yet to be resolved. These portend real possibility of interference with witnesses;
- b) That the accused is a flight-risk. They stated that, after the incident, he had attempted to escape in an ambulance provided by his son;
- c) That the court had already denied him bond except that he was illegally released.

[4] Given the nature of arguments presented, I should make two statements of law. One, that the court has power to review its decision on bail. There is no necessity of filing an appeal should the circumstances change or be in favour of releasing the accused on bail. Two, prosecution counsel or defence counsel or victims' counsel are not competent to deny the accused bail by consent or through any form of arrangement. It is only the court which can deny the accused bail where there are compelling reasons in the threshold provided in the Constitution.

[5] Back to the main. I do note that, whereas the accused has another home in another constituency, he had visited his farm during the pendency of this case. The visit is said to have caused real panic to the widow who sought shelter in the home of the brother of the deceased.

I also do note that the land dispute which is said to be the cause of the attack which resulted into the death of the deceased has not been resolved. A combination of these factors poses a possibility of confrontation with witnesses herein specifically the widow of the deceased. This constitutes a compelling reason for which bail may be denied under article 49(1)(h) of the Constitution. Accordingly, I find there is compelling reason. And, I decline to grant the accused bail. However, I direct that the evidence of the widow shall be taken as soon as possible. Thereafter, any application for bail may be considered. It is so ordered.

DATED AND DELIVERED AT NAROK THIS 19TH DAY OF APRIL 2021 THROUGH MICROSOFT TEAMS ONLINE APPLICATION

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F. GIKONYO

JUDGE

In the presence of Court Assistant Mr. Kasaso, Ms. Torosi for the state, Mr. Kamwaro for the accused persons and DPP holding brief for Mr. Masikonde for Victims.

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F. GIKONYO

JUDGE