



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BOMET

CRIMINAL CASE NO. 19 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES LANGAT.....1ST ACCUSED

LEONARD LANGAT.....2ND ACCUSED

RULING

1. Charles Langat and Leonard Langat (Accused persons) are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya. The particulars of the offence are that on the 29th day of August, 2020 at Ngererit village in Ngererit Sub-location, Konoin Sub-County within Bomet County murdered Nicholas Kipngeno Langat.
2. The Accused have now applied to be granted bail pending their trial which is scheduled for 24th November 2021. The application was urged by their defence counsel Ms. Chepkemoi.
3. In urging the application, Counsel submitted that the Accused were not a flight risk and would comply with any bond terms granted by the court. That their family was willing to stand surety for them. She urged the court to grant the application under Article 49 of the Constitution.
4. The application is opposed by the State. In opposing the application, Mr. Muriithi Senior Principal Prosecution Counsel relied on the social inquiry report filed by the Probation Officer. He submitted that the situation on the ground was volatile as a result of the offence and that the victim's family was apprehensive that their security would be compromised.
5. In response, Ms. Chempkemoi submitted that the victim's family was also the Accused's family as the deceased was the brother to both Accused. She submitted that the Probation Officer's Report was not binding on the court.
6. Article 49 (i) h of the Constitution provides:-

“An arrested person has the right to be released on bond or bail on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released.”

7. In addition to the above, The Judiciary's **Bail and Bond Policy Guidelines, March 2015** sets out judicial policy on bail at page 25 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.**

8. In the present case, the State has opposed bail on grounds that the family of the Accused was apprehensive of their safety if the Accused was released. They base this submission on the pre bail report filed by the Probation Officer on 20th April 2021.

9. It is trite that the grant or denial of bond is at the discretion of the court. In exercising such discretion the court is guided by law as contained in Article 49 (i) (h) of the Constitution and parameters set out in Section 123A of the Criminal Procedure Code as well as the Judiciary Bail and Bond Policy Guidelines (2015) already set out above.

10. I agree with the applicant's submission that the pre-bail report is not binding on the court. However, a balanced social inquiry report assists the court in understanding the socio-economic circumstances of the Accused while setting bail or bond terms.

11. In this case, the Bail Information Report in respect of each accused states that the deceased was the younger brother of the two Accused. That the family had on several occasions quarreled over the sale of the family land by the 1st Accused; that both the 1st and 2nd Accused abuse alcohol, and whenever they are intoxicated, quarrel and fight the rest of the siblings. That it was one such quarrel and fight that caused the death of the deceased.

12. The reports indicate that the siblings of the Accused fear for their lives if the Accused were released on bond. On the other hand, the report states that the father and the uncles of the deceased were willing to stand surety for them but at a later date when the situation on the ground would have changed and there was harmony in the family.

13. I have considered the application and the submissions with respect to the likelihood of further violence in the home. I have also considered the Accused's family's reluctance to have the two Accused back home at this stage. It is the duty of the court to balance the rights of the Accused against the safety and security concerns of their siblings. The fear of the siblings cannot be remote as according to them and the charge filed in court, they lost their sibling (the deceased) due to the extreme violence of the Accused when they attacked and fatally wounded him.

14. I am persuaded to exercise my discretion not to grant the Accused bond at this stage. They shall remain in custody pending their trial or until further orders of this court.

15. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 20TH DAY OF MAY, 2021

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the 1st and 2nd Accused, Defence Counsel Mr. Koske, Mr. Murithi for the DPP, and Kiprotich (Court Assistant).