



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. E034 OF 2020

REPUBLIC.....DPP

VERSUS

PETER WERU *alias* NGOTHO..... ACCUSED

RULING

The applicant, **PETER WERU *alias* NGOTHO**, has made an application before this court that he be released on bail pending the hearing and determination of his case. Mr. Makau, representing the applicant, made submissions to the effect that bail is a constitutional right. That applicant is a young man and sole breadwinner of his young family and that due to Covid pandemic, there is need to decongest the prison. An undertaking was made that he will attend court.

In opposing the application, Mr. Okachi for the state submitted that since the differences have spilled to the families of the parties, there are chances that violence may erupt again. That the right to bail is not absolute and that this application ought to be dismissed, and applicant to be remanded in custody.

Upon conclusions of the submissions and in view of the nature of the objection raised to this application, this court ordered for a prebail report for consideration. The probation officer duly complied and filed the report ordered for.

Under Article 49(1)(h), of the constitution of Kenya;

“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.**

The right to bail is therefore no doubt available to all accused (or arrested) persons irrespective of the nature of charges they face. The rider however, is that the same right may be denied where there exists compelling reasons. The import of this is that where there are reasons that are good and strong enough as to justify the denial, then bail may be denied.

In this case, the prosecution has opposed this application only on one ground. That the release of the applicant may re-ignite violence in the neighbourhood where the deceased and the applicant both operated from. In view of the nature of this objection, this court ordered for an inquiry of the same. A probation officer’s report dated 19.11.2020 was duly filed herein on 31.5.2021.

I have considered the said social inquiry report (Pre-bail report). The same confirms that the alleged tensions have eased and that the applicant is now suitable to be released on bail on appropriate conditions.

While relying on this report of the probation officer, I am not convinced that the ground of objection raised by the prosecution rightly constitutes a compelling reason good enough as to justify a denial of the right to bail to the applicant. I hereby dismiss the prosecution’s application and order that the applicant may be released on bail on the following terms.

- i. The applicant may be released on a bond of Kshs. 1 million with 1 surety of a similar amount.**
- ii. In the alternative, the applicant may be released upon deposit of cash bail of Kshs.200,000/=**
- iii. The applicant is ordered, upon release to specifically give details of where he shall reside pending determination of his**

case.

iv. He is ordered never to interfere with and or contact any of the prosecution witnesses, either directly or indirectly till this case is determined.

v. Applicant, upon release, is ordered to attend court at all times as may be ordered by the court till his case is determined.

Orders accordingly.

D. O. OGEMBO

JUDGE

23.6.2021.

Court:

Ruling read out in court (on-line) in the presence of the accused, Mr. Makau for the accused and Ms. Maina for the state.

D. O. OGEMBO

JUDGE

23.6.2021.

Mr. Makau:

We ask for a hearing date.

Court:

A hearing date to be given in this matter.

Hearing 28.9.2021.