



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO E009 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES KIPRONO TONUI.....ACCUSED

RULING

1. Charles Kiprono Tonui (Accused) is 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 31st day of May 2021 at Nyageso village in Ngererit Sub-location in Konoin Sub-County within Bomet County murdered one Benard Kipkurui Tonui.

2. The Accused took plea on 1st July 2021 and denied the charge. Defence counsel subsequently requested the court to direct the filing of a pre-bail Report to enable him make an application for bond.

3. At the hearing of the application on 18th October 2021, Mr. J.K Koech, Counsel for the Accused submitted that the Accused had no prior criminal record and that the incident in which the deceased died was unfortunate and not premeditated. He submitted that there were no compelling reasons to deny him bond. Counsel further raised concern that the pre-bail report was not a product of interviews on the ground and did not reflect a true picture of the Accused's home environment.

4. Mr. Murithi for the Prosecution opposed the application. He submitted that the probation report was not favourable at all and that the victim's wife and children were yet to come to terms with the loss of the deceased. Further, Counsel submitted that the situation on the ground was volatile and that the Accused should not be released for his own safety.

5. Mr. Koech reiterated the concerns of his client in respect of the veracity of the probation report. He urged that the Accused be released as he was not a flight risk.

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 this case the State has opposed the application by placing reliance on the probation report. The report filed on 19th July 2021 states that the Accused does not enjoy cordial relations with his parents and siblings as he has constantly orchestrated quarrels and threatened family members especially his father. That the Accused abuses alcohol and has been engaged in fights with members of the community. Further, the report states that the Accused was saved from a lynch mob at the time of his arrest and therefore his safety may not be guaranteed at the moment.

9. In considering this application, I am guided by Article 49 (i) (h) of the Constitution restated above. I have taken into consideration the home inquiry report. In particular, I observe that the family of the Accused who are also victims of the offence fear that the Accused will harm them if released. The family also fears that he may be lynched. I have considered the fact that the deceased and the Accused were siblings. This relationship lends credence to the fears expressed by the family.

10. Having taken the above factors into consideration, I exercise my discretion not to grant the Accused bail at this stage. He is at liberty to renew his application once the family members have testified. This application is thus rejected.

11. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 21ST DAY OF OCTOBER, 2021.

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R. LAGAT-KORIR

JUDGE

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