



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO. 5 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**COSMAS MUTAI.....ACCUSED**

**RULING**

1. Cosmas Mutai (Accused) 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 Mercy Chepkorir on 8<sup>th</sup> March 2020 at Kalongei village in Chebangang Sub-location in Konoin Sub County within Bomet County.

2. The Accused took plea on 4<sup>th</sup> November 2020 and denied the charge. Pre-trial directions were given by the court on 1<sup>st</sup> December 2020. When the matter came up for hearing on 10<sup>th</sup> November 2021, the Prosecution Counsel sought an adjournment. He submitted that he had reviewed the file and consulted the Investigating Officer and had come to the conclusion that it might be necessary to pursue an inquest instead of the present charge. Counsel sought time to arrive at a firm conclusion on which way to go.

3. Mr. Nyaingiri learned defence Counsel stated that he had no objection to the Prosecution being granted time to evaluate their case. Counsel however made an application that the Accused be released on bail pending any action by the DPP. He submitted that the Accused was a 24 year old student pursuing higher education and was not a flight risk. Counsel further submitted that the Accused had a fixed abode as he still resided with his parents who were both present in court and had assured him that they would ensure that the Accused attends court.

4. In response, Mr. Murithi for the State submitted that the court should consider the Probation report. He however left the matter to the discretion of the court.

5. The Application is anchored on Article 49 (i) h of the Constitution which provides:-

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

6. I have considered the respective submissions and the Probation Report. I have also considered the law and purposes of bail. Under Article 49 (i) h, an accused person is entitled to bail unless there were compelling reasons to militate against the enjoyment of that right. Such compelling reasons must be brought to the attention of the court by the State. (See **R. V. Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008; R. V. Dwight Sagaray & 4 Others, Nairobi Criminal Case No. 61 of 2012 (2013) eKLR**)

7. In this case, the Prosecution has not raised any compelling reason for the court not to admit the Accused to bail. As indicated above, Prosecution Counsel only deferred to the Probation Officer's report which he indicated had not made any recommendation but deferred to the discretion of the court.

8. The Probation Officer's bail assessment report dated 17<sup>th</sup> November 2020 stated that the Accused's family was ready to stand surety for him and that the local community was also supportive of his release on bail. The Report also stated that the deceased's family was reluctant to have the Accused granted bond since they were still bitter. That both the Accused and deceased came from neighbouring villages and that their respective families were yet to reconcile. The report however did not pick out any hostility that would jeopardize the safety of the Accused.

9. The sentiments of the victim's family as captured in the Probation Officer's report are indeed valid considering their loss. The expectation for reconciliation within the community cannot also be downplayed as the same would restore harmony in the community. This expectation

however cannot of its own amount to a compelling reason under Article 49 (i) h of the Constitution.

10. It is my finding, having taken all the factors into consideration, that there is no compelling reason to deny the Accused bail. He is released on the following conditions:-

- (i) The Accused shall execute a personal bond of Kshs.300,000/= and provide 1 surety of similar amount.
- (ii) He shall not interfere with prosecution witnesses in any way.
- (iii) He shall attend court whenever required and shall not impede the trial in any way.

11. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 25TH DAY OF NOVEMBER, 2021.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Accused, Ms. Chirchir holding brief for Defence Counsel Mr. Nyaingiri, Mr. Murithi for the DPP, and Kiprotich (Court Assistant).**