



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**HCCRC NO. 20 OF 2019**

**JOSEPH GATI BOKE *Alias* SEREHE.....APPLICANT**

**VERSUS**

**PROSECUTOR.....REPUBLIC**

**RULING**

**JOSEPH GATI BOKE *Alias* SEREHE**, is one of the nine (9) persons who are facing trial for the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

1. By an application dated 21<sup>st</sup> July 2021, he has asked the Court to grant him pre-trial Bond.
2. In his considered opinion, there are no compelling reasons to warrant his continued stay in remand.
3. The prosecution has opposed the application. **CPL Fredrick Odemba**, who is one of the Investigating Officers in this case, swore an affidavit. He noted that the offence committed on the night of 2<sup>nd</sup> April 2019.
4. The Applicant was arrested on 12<sup>th</sup> April 2019, and he was held at Kehancha Police Station.
5. According to Cpl. Odemba, the Applicant attempted to escape from lawful custody on 2<sup>nd</sup> May 2019, when he was being escorted to the Kehancha Law Courts.
6. However, the Applicant categorically denied that contention.
7. As the Applicant noted, the prosecution did not make available to this Court, any tangible evidence to prove the alleged attempt to escape from lawful custody.
8. If there had been such an attempt, it should have been easy for the Investigating Officer to provide an extract from the relevant Occurrence Book, from the police station at which the offence was recorded.
9. In this instance, the prosecution did not supply the Court with either an extract from the **OB**, or with a record of the proceedings within which the incident was captured. Therefore, there is no material upon which the Court can make a finding that the Applicant had previously attempted to escape from lawful custody.
10. The prosecution also pointed out that the Applicant hails from Kehancha Town, which is along the border between Kenya and Tanzania.
11. Whereas the Applicant hails from a border town, that of itself would not be a basis upon which he should be denied Bond.
12. The prosecution also suggested that there was a great possibility of chaos and bloodshed if the Applicant is granted bond.
13. The third suggestion by the prosecution was that the Applicant may interfere with or intimidate prosecution witnesses who were not under Witness Protection.
14. As the prosecution noted, the Applicant is a relative of some of the other accused persons. The said relatives of the Applicant had been granted Bond.

15. However, the prosecution did not bring to this Court, any evidence to show that the Applicant's co-accused had interfered with or intimidated any of the prosecution witnesses.

16. The prosecution has not demonstrated why the Applicant ought to be singled-out as the person whose release on Bond could trigger chaos, bloodshed, intimidation or interference with key witnesses.

17. It is true that the offence with which the Applicant is charged is a serious one. The prescribed sentence for a person convicted for the offence of Murder is Death.

18. However, the seriousness of the charge emanating from one incident cannot affect for only one person, who was an accused alongside 8 others. Or, if there was any particular factor that would render the Applicant's situation different from that of his co-accused, I find that the prosecution has not demonstrated any such unique factor.

19. On the question about of the

***“high possibility of the accused persons conspiring to interfere with the case, as the 5<sup>th</sup> and 9<sup>th</sup> accused persons have intimated to the prosecution of a possibility of entering into a plea bargaining”;***

20. I find that the Applicant cannot be singled out for differential treatment before the law.

21. If the prosecution had a solid foundation upon which the assertion was based, the said conspiracy would involve other co-accused persons. I find that if the prosecution has tangible evidence against the Applicant and any of the co-accused, it would be wrong to take action against one person only.

22. Any person who was trying to subvert the course of justice should be brought to book.

23. In conclusion, I find that the prosecution has failed to demonstrate to this Court that there were compelling reasons, which would justify the rejection of the application for pre-trial Bond.

24. Accordingly, the accused is admitted to Bond on the following terms;

***(a) He shall execute a Personal Bond for Kshs 500,000/= with 2 Sureties of the same amount.***

***(b) He will report to the Officer Commanding Police Station, Kehancha, every Monday and every Friday.***

***(c) He will refrain from making contact with the witnesses, whether such contact is direct or by proxy.***

***(d) If he wishes to travel outside the area which falls outside the jurisdiction of the OCS Kehancha Police Station, he must obtain the written authority of the said Officer prior to such travel;***

***Provided that the OCS shall not withhold his authority unreasonably, if he is provided with the itinerary of the applicant.***

***(e) If the applicant wishes to travel out of the country, he must first seek the authority of the Court.***

**DATED, SIGNED AND DELIVERED AT KISUMU**

**THIS 20TH DAY OF DECEMBER 2021**

**FRED A. OCHIENG**

**JUDGE**