



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. E014 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

GIBSON KIPNGETICH BETT.....ACCUSED

RULING

1. The Application before me seeks that the Accused Gibson Kipngetich Bett be released on bail pending trial. He is facing trial for the murder of his wife one Vicoty Chepngetich. He is alleged to have committed the offence on 7th August 2021 at Berea village of Kitoben Sub-location of Mugango Location in Bomet County.

2. In urging the application, Ms. Chirchir for the defence submitted that the Accused was not a flight risk and that his father was ready to stand surety for him.

3. Mr. Murithi for the prosecution opposed the application on the basis of the information contained in the Probation Officer's bail assessment report. He submitted that the report recommends that the Accused remain in custody for 'his own safety as the ground was volatile.'

4. In response, Ms. Chirchir submitted that the right to bail was granted by the Constitution and that the reasons submitted by the Prosecution in opposition did not amount to compelling reasons. She submitted that the Accused had undertaken to be on his best behavior if granted bond.

5. It is trite that bail is a Constitutional right granted under Article 49 (i) h of the Constitution and should be available to an Accused person unless there were compelling reasons. The Constitution in its wisdom left the decision of what amounts to compelling reasons to the discretion of the court. In deciding what amounts to compelling reasons, courts consider the criteria set out in the Criminal Procedure Code and Bail and Bond Policy.

6. Section 123A of the Criminal Procedure Code sets out the parameters to guide the court in considering an application for bail. It provides thus:-

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.

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 opposition to bail is premised on the antecedents of the Accused it has been stated in the Probation Officer's report that the Accused was given to violent tendencies even prior to the incident and that there was hostility on the ground which would jeopardize his safety. That there was strong opposition to the Accused being granted bond as the safety of the deceased's child would not also be guaranteed.

9. Having taken all the factors into consideration, I exercise my discretion not to grant the Accused bond at this stage. He shall remain in custody until the trial commences and the key witnesses have testified.

10. Orders accordingly.

Ruling delivered, dated and signed this 16th day of December, 2021.

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R. LAGAT-KORIR

JUDGE

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