



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 40 OF 2019**

**REPUBLIC.....DPP**

**VERSUS**

**PAUL NDOLO KASYOKA.....ACCUSED**

**RULING**

The accused filed the application dated 30.10.2019 on 1.11.2019. The same came up for hearing on 13.2.2020. This application basically seeks that the applicant (accused), be released on bail on reasonable terms. It is supported by the affidavit of the applicant sworn on 30.10.2019. It was submitted that Article 49 of the constitution gives the right to bail which may only be denied where there are compelling reasons. That there is no proof or evidence to show that the applicant is likely to abscond. Neither has it been proved that the applicant is likely to intimidate or interfere with the witnesses.

It was further denied that the accused does not have any fixed place of abode.

In opposing this application, counsel for the Respondent (the state), submitted that whereas the constitution guarantees the right to bail, the right may be denied should there be compelling reasons to do so. That accused faces a serious charge of murder with a possibility of death sentence. And being aware of the strong case he is facing, accused is likely to abscond. He is also knows the witnesses well, giving the possibility that he may interfere and or intimidate the said witnesses.

It was also submitted that the accused is a flight risk, a fact shown by the fact that he was arrested by members of the public while trying to escape from the scene. Further, that his place of abode remains unknown as so it would be impossible to trace him in case he absconds.

And lastly, it was submitted that the accused's own life would be in danger should he be released on bail as members of the public remain hostile to him.

These were basically the arguments that were made before the court. I have carefully considered the said submissions as made by both the applicant and the Respondent sides. It is agreed by both sides that bail is a constitutional right, but that the said right may be denied should there exist compelling reasons as to justify the denial of this right.

Article 49(1) (h) of the constitution of Kenya states;

(a) Article 49(1) An arrested person has the right –

(b) To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

In opposing bail herein, the prosecution raised a number of issues. In a nutshell these were as follows:-

(i) That accused faces a serious charge and so is likely to abscond:

There is no doubt that the accused indeed faces a serious charge of murder with a sentence of death in case of conviction. It is also no in doubt that since some evidence has already be taken herein, the accused knows at least part of the case he faces. But this in my view, cannot in itself be a good reason for denial of bail to the accused. This in view of the express provision in the constitution that all accused, irrespective of the nature of the charges are entitled to the right to bail. I therefore do not find this to be a compelling reason good enough to persuade the court to deny the accused the right to bail.

(ii) Likelihood of interference with witnesses:

It was submitted that since the accused knows the witnesses, he is likely to interfere with them if released on bail. It has been held severally by the courts that for this reason to be strong enough as to constitute a compelling reason, the prosecution must show evidence of such interference and that mere allegations of that interference without proof of the same is not enough (See Republic Vs. Margaret Kemunto & Another HCCR 84/2019 and Sarah Wairimu Kamotho, HCCR 60/2019). In the absence of such proof of interference this ground falls short of being a compelling reason.

(iii) That accused is a flight risk:

Again, the prosecution did not give any evidence to show that if released on bond, the accused would abscond. To me, this ground sounded like a fear on the part of the prosecution. Same cannot amount to a compelling reason.

(iv) That accused has no known fixed abode:

On this ground, there is no evidence to show that the investigating officer(s) even attempted to locate the residence of the accused. It is therefore not proven that accused indeed has no fixed place of abode.

(v) Accused's own security:

This is the last ground that was raised by the prosecution in opposing bail. Nothing was placed before court to show that the accused's own life would be in danger should he be released on bond. I therefore do not find this to be a compelling reason either.

The cardinal consideration on grant or denial of bail is whether the accused, if released, will still attend court for the hearing of his case. I am not convinced that the prosecution has proved the existence of any good ground that would make this court deny the accused his right to bail. I accordingly dismiss the objections of the prosecution and grant the accused bail on the follows terms:

- (i) Accused may be released on a bond of Ksh. 2 million with 1 surety of a similar amount.
- (ii) Accused is ordered never to contact, intimidate or interfere with any of the prosecution witnesses either, directly or indirectly by his proxies' or relatives.
- (iii) Accused is ordered to attend court at all times as may be ordered by the court till the final determination of his case.

Orders accordingly.

**OGEMBO D**

**JUDGE**

**26.2.2020**

Court:

Ruling read out in open court in the presence of both the accused, Mr. Marube holding brief for Ms. Ngania for accused and Ms. Kimani for the state.

**OGEMBO D**

**JUDGE**

**26.2.2020**