



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.20 OF 2019**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**DANCUN ONGORO ODIWOURI.....ACCUSED**

**RULING**

1. Before me is an application brought by way of Notice of Motion dated 7<sup>th</sup> October 2019 for the release of the accused person herein on bail pending trial. The application was filed with an affidavit sworn by the accused person on 7<sup>th</sup> October 2017, in which he deposed that he was a married person with children, a Kenyan citizen and would abide by the terms and conditions of bail.

2. Ms Chepkemai learned counsel for the accused urged this court to grant her client bail. She relied on the pre-bail report filed by the Probation Officer Bomet Mr. Joel Nyaribo.

3. In response, the Principal Prosecuting Counsel Mr. Murithi submitted that the pre-bail report was not favourable as the accused person had previous conviction of assaulting a prison officer at Voi and that nobody was willing to stand bail for him.

4. I have considered the application, the pre-bail report filed as well as the submissions of counsel for the accused and counsel for the state.

5. Bail is a constitutional right conferred under Article 49(1)(h) of the Constitution of Kenya 2010 which provides as follows –

*“49 (1) an arrested person has the right –*

*(h) to be released on bond or bail, on reasonable conditions, pending charge or trial, unless there are compelling reasons not to be released”.*

6. Courts have held that the primary burden of demonstrating compelling reasons for denial of bail rests with the state. Courts have also considered the particular circumstances of each case in determining applications for bail.

7. I have perused and considered the pre-bail report which has been relied upon by both the counsel for the accused person and the Principal Prosecuting Counsel. Though the accused was not convicted for assaulting the administration police officer, he is said to be violent and has even threatened his family members. He has been depicted as a drunkard since he got employed in the prison services.

8. Taking all the facts and circumstances of this matter into consideration, though the accused is presumed to be innocent until proved guilty, I am of the view that he is likely to commit other offences of violence since he has even threatened to burn his family’s houses and then fail to come to court.

9. In my view, there are compelling circumstances herein justifying this court to grant the accused person bail both for his own safety, safety of the community, and avoid him jumping bail. I decline to grant the accused person herein bail.

**Dated this 30<sup>th</sup> day of April 2020.**

**GEORGE DULU**

**JUDGE**

Delivered through video conferencing in the presence of Mr. Langat court assistant, Mr. Musyoka ICT officer, Ms Fundi for state and the accused.