



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 37 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**HILLARY KIPKORIR YEGO.....ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He pleaded not guilty and by a Notice of Motion dated 15/10/2019 moved the court to be released on reasonable bond/bail terms pending the hearing and determination of the cause.

2. The said application was supported by his annexed affidavit wherein. It was deponed that he was married with one child to whom he was the sole breadwinner and that it was only fair and just to be released on bond to enable him defence himself from outside remand and to protect his precious as well as look after his family.

3. The application was opposed through an affidavit sworn by **PC SHEBAN BARAKA** the Investigating Officer in this case, wherein it was deponed that the accused was aware of the weight of the prosecution case and it must be presumed that such a person has incentive to abscond from the jurisdiction of the court. It was contended that there were others who were involved in the commission of the offence who were still at large and the temptation of the Applicant to abscond from the jurisdiction of the court was real.

4. It was deponed further that the applicant had no known or fixed place of abode and was affiliated to a gang which had been terrorizing and mugging members of the public who walk along Limuru, Prof. Wangari Maathai and Kolobot Road.

5. In compliance with the Bail Bond Policy Guidelines the court called for pre-bail report wherein the following were noted:- The accused came to Nairobi in the year 2012 from Mois Bridge and worked as a shamba boy for five years before venturing into self-employment at Gikomba and later started selling miraa at Pangani up to the time of his arrest. He was separated from his wife and the mother of one child. His parents were willing to accommodate him at their rural home and to ensure he honours the bail terms. On the Victim Impact Statement it was indicated that the family was still in pain for the loss of their loved one and objected to the accused being released on bond.

**SUBMISSIONS**

6. The applicant filed written submissions in which it was submitted that the prosecution had not advanced any compelling reasons to warrant a denial of bail/bond as set out in **REPUBLIC v DAVID MUCHIRI MWANGI [2018] eKLR**. It was submitted that since the accused had been in remand for three (3) years, a bond of Kenya shillings five hundred thousand or cash bail of three hundred thousand with the requisite surety would be appropriate.

7. Mr. Okeyo relied on the contents of the affidavit by the prosecution and submitted that there were compelling reasons as advanced in paragraphs 4, 5, 6 and 7 thereof.

8. I have noted that there is on record another pre-bail report which was filed on 23<sup>rd</sup> January, 2018 where the family of the accused alleged that for more than five years he never visited them, which seems to contradict the latest report dated 23<sup>rd</sup> October, 2019 and it would therefore have been in the interest of justice to get a further report prepared by an officer rather than **ABIMA MM** and **MARY ATATI** which is now not possible due to the COVID 19 pandemic and therefore this ruling is issued on the basis of the conflicting two pre-bail reports.

**DETERMINATION**

9. The only issue raised by the prosecution are that the accused was aware of the weight of the prosecution case against him and might, based on the same be presumed to have incentive to abscond and that he was charged with a very serious offence. These factors on their own cannot be considered as compelling reasons in line with the provisions of **Article 49 (1) (h)**, there is no evidence that the said fears cannot be mitigated through appropriate bail/bond terms.

10. The main purpose for bond is to secure the attendance of the accused person at his trial and there is no evidence tendered before the court to confirm that if released on bond the Accused will not attend the trial. The weight of the prosecution case on its own cannot be a ground for the court to deny an accused person bail.

11. I am therefore satisfied and hold that the prosecution failed to place before the court any compelling reasons to enable it deny the accused the enjoyment of his constitutional right to bail and therefore allow the application herein.

12. Being alive to the case that the accused faces is a charge of murder wherein one of the available sentence upon conviction is death, I will therefore order that he be released on bond on the following terms and conditions:-

*a. Bond of Kenya shillings one million (Kshs.1,000,000/=) with one surety of similar amount.*

*b. In the alternative cash bail of Kenya shillings five hundred thousand (Kshs.500,000/=) with two sureties of similar amount.*

*c. Upon his release on bond/bail the accused shall while maintaining the current Ministry of Health guidelines on Corona pandemic report to his area chief and shall be reporting to the said chief once every last Friday of the month until final determination of this case.*

*d. The said chief shall file with the deputy registrar of this court a monthly report on the accused conduct and attendance to the said mention until further orders of the court.*

It is so ordered.

**Dated, delivered and signed at Nairobi this 28<sup>th</sup> day of May, 2020**

**Through Microsoft Google Teams.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

Ms Onunga for the State

Mr. Farah for the accused

Accused present

Court assistant: Karwitha