



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 29 OF 2019

REPUBLICPROSECUTOR

VERSUS

LTANGOI LENEMITA ALIAS WILLY SAMSON LESINGIRA.....1ST ACCUSED

SIKITAAT LEPARMORIJO Alias LENTOOK.....2ND ACCUSED

PETER ITIRAN LEKOLUA3RD ACCUSED

LOCHUKU LEKEPEI..... 4TH ACCUSED

RULING

Application

1. The accused persons were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya. On 21/11/2019 this court made a ruling on bail and found that the prosecution had established compelling reasons why the accused persons should not be released on bail.

2. On 18//2/2020 Mr Otieno counsel, for the 3rd accused person applied for review of bail/bond citing that it was a constitutional right to be released on bail/bond pending trial as well as a right to be presumed innocent until contrary is proven. It was his argument that the 3rd accused person has a fixed abode according to a letter by the Chief of Rumate Sub Location, therefore his constitutional right should be granted.

3. Mr Lekona, counsel for the 4th and 5th accused person similarly made an application for review of bond/bail on the basis that the issues for objecting bond were untenable as the 4th and 5th accused persons have fixed abodes as they reside in Longopito Location. Furthermore, that the 4th accused person is employed as matatu driver while the 5th accused is employed by Ndugu Zangu Christian community as a security guard. He was of a strong view that being a nomad and pastoralist should not be a ground to deny bond.

4. The applications were opposed by the replying affidavit of **CPL MOHAMED HASSAN** an investigating officer attached to the homicide unit at the headquarters of directorate of criminal investigation. He argued that the right to be released in bail/bond pending trial is not absolute as the gravity of the charge, circumstances under which the deceased was murdered should be considered. The applicant's together with their associates concealed the deceased body at an unknown place and to date the remains of his body have not been recovered. The applicants moreover are nomads with no fixed abode and the process of tracing and arresting them was tedious and they incurred a lot of expenses. The prosecution argued that the letter by the assistant chief is no assurance that they will attend court. Due to the nature of their culture as nomads it would be hard for them to be traced. The release of the applicant would jeopardize the case as they would get a chance to intimidate the witnesses.

Analysis and determination

5. Bail is now a constitutional right of every accused person under **Article 49 (1) (h)**, which can only be limited where there are compelling reasons not to release the accused on bail. Compelling reasons must be proved by the prosecution. Jurisprudence on what constitutes compelling reasons seem to have attained a recognizable shape. Here I am content to cite **REPUBLIC v MGUNYA & ANOTHER (2011) eKLR** on relevant factors, to wit: -

a. The nature of charge.

- b. The strength of the evidence which supports the change.**
- c. The gravity of the punishment in the event of conviction.**
- d. The previous criminal record of the accused if any.**
- e. The probability that the accused may not surrender himself for trial.**
- f. The likelihood of the accused interfering with witnesses or that he may suppress any evidence such as incriminating him.**
- g. Likelihood of further charges being brought against the accused.**
- h. The probability of a finding of guilt.**
- i. Detention for the protection of the accused.**
- j. The necessity to procure a medical or social report pending the disposal of the case.**
- k. Accused persons own safety, security and protection – REPUBLIC V KIMUNYA.**
- l. If the accused person is likely to pose public danger by being released on bail.**
- m. If by releasing the accused on bail public confidence in the administration of justice will be dismissed.**
- n. The character antecedents, associations and community ties of the accused person.**

6. It has been argued by counsel that the accused persons have employment and fixed abode and they should be granted bail/bond as it is their constitutional rights. However, on examination of the record, the circumstances which led to denial of bail seem not to have changed.

7. As indicated by the IO previously IP Maingi of Isiolo GK prison together with a witness are still missing after participating in a search. The body of the deceased is yet to be recovered which makes possibilities of interference with evidence and witnesses to be quite high.

8. But one thing I agree with Lekoona Advocate is that mere fact that the accused are nomads should never per se be a compelling reason to deny a person bail. That notwithstanding, I should determine the question of fixed abode and possibility of absconding.

9. The letter by the chief of Rumate Sub location, states that although the parents of the 3rd accused have a permanent resident within the area, he was quick to add that he knows nothing else about him. There is nothing assuring that the 3rd accused will not abscond. Nothing shows that the 3rd accused person has any fixed abode.

10. I note with concern that it is still being alleged that the deceased was killed in an illegal deal that went sour; and that an officer of the prison and a witness went missing. These matters portray a peculiar scenario of this case. And taking the totality of the circumstances in this case into account, I find that there are compelling reasons not to release the accused persons on bond under article 49 (1) (h) of the Constitution. Accordingly, the applications are without merit and are dismissed. The accused persons shall remain in custody until the case is heard. The case to be fast tracked.

Dated, signed and delivered at Meru on this 29th day of July 2020

F. GIKONYO

JUDGE