



**REPUBLIC OF KENYA**

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

**MISC.APPL NO.13 OF 2020**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**JOSPHAT KIPKOECH TOWETT.....RESPONDENT**

**RULING**

1. This is a ruling on application for bond. The accused was charged with the offence of **Murder contrary to Section 203 as read together with Section 204 of the Penal Code**. Particulars are that on the 16<sup>th</sup> day of December 2018 at Sururu Location in Njoro Sub County within Nakuru County, the accused murdered **Fancy Chepkemoi Birir**.

2. The state opposed the accused being released on bond on reasons contained in affidavit sworn by the investigating officer **No.226752 Sgt James Makori** on 12<sup>th</sup> March 2020. He deponed that the suspect was apprehended at Chepseon Trading Centre. He averred that the accused fled the scene immediately after the offence and he was arrested at Chepseon Trading Centre.

3. Counsel for the accused submitted that the further affidavit filed by the investigating officer contain factual statements which can only be proved during the trial of the accused. He submitted that contrary to allegations that the accused does not have a fixed abode, he hails from Mau Narok Mauche area more specifically in a scheme known as Sururu; that he has built a home where his child stays with his father.

4. Counsel further submitted that the prosecution allege that the accused disappeared to Chepseon after committing an offence but it should not be lost that the case has not been proved against the accused and no evidence has been tendered concerning arrest; that they are assertions which are not proved and efforts made to arrest the accused have not been tabled; that the Court is not able to assess whether the investigating officer's allegations are true.

5. On interference with witnesses, counsel for the accused submitted that the allegations are without merit; that what is required is for accused to attend Court until the end and that is why there is condition of surety. He prayed that the accused be released on bond.

6. In response, the state counsel submitted that paragraph 3 of the investigating officer's affidavit stated the occurrence book number. She further stated that the investigating officer gathered intelligence that the accused had put up a hideout in Chepseon. She urged Court to consider that this is a murder case and there are witnesses who are vulnerable. She submitted that the accused is likely to abscond and urged the court to deny accused bond.

7. In a rejoinder, **Mr. Ooga** submitted that what is stated in the affidavit is the criminal case number not the occurrence book number and on allegation that the accused escaped from the jurisdiction of the Court, there is no law that limits movements unless there was an order limiting movement.

**ANALYSIS AND DETERMINATION**

8. I have perused affidavit sworn by the investigating officer on 12<sup>th</sup> March 2020. Besides stating that the accused is a flight risk, he stated that the accused interfered with witnesses. I have not seen any affidavit from the witnesses confirming interference from the accused. Interference with witness by threats or any other kind of interference are factual issues which should be deponed to by the party affected. Without such averments in an affidavit by witnesses, it is difficult to verify.

9. Other issues raised in the affidavit are statements on commission of offence which require prove in a hearing. As at now the accused is presumed innocent until proven guilty after evidence has been tendered by prosecution. The fact that bond is meant to ensure that an accused person attends Court until the matter is concluded should not be lost. In my view the fact that a suspect is not found for arrest at the locality of the incident should not be a ground to deny bond. There is no mention of an act of resistance to arrest by the accused at the place he was arrested. The affidavit also mentions domestic issues between the deceased and the accused which could have led to the incident; this points at a relationship between two and it cannot be true that the accused's place of abode is not known.

10. Further there is no indication in the affidavit filed of any danger on the life of accused if released on bond. In my view, the prosecution has not demonstrated compelling reasons to deny accused bond.

11. **FINAL ORDERS**

1. Accused's application for bond is allowed
2. Accused may be released on bond of kshs.500,000 with one surety of a similar amount.

**Ruling dated, signed and delivered via zoom at Nakuru This 23<sup>rd</sup> day of July, 2020**

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**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer - Court Assistant

Mr. Ooga for applicant

Rita for State