



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL CASE NO. 7 OF 2020

ODPP..... REPUBLIC

VERSUS

FRANCIS MUGO WANGECI..... ACCUSED

RULING

INTRODUCTION

1. The application for bail was made orally by counsel for the accused person on 16.7.2020.
2. The Republic did not oppose the application at the mention on 22.7.2020.
3. The pre bail report was filed on 29.7.2020 it recommended the accused person be granted bond as his family was willing to stand surety for him and he is not a threat to society. The victim impact assessment was that the family of the deceased was not bitter about the actions of the accused their main contention was that the accused may flee.

ANALYSIS

4. The primary issue is whether there are compelling reasons to deny the accused person his right to bail. The reasonable bail and bond terms is a constitution right provided in **Article 49 (1) (h) of the Constitution**. It provides that an accused person has a Constitutional right that can only be denied if there be compelling reasons.

“An arrested person has the right—

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

5. The Bail and Bond policy sets out principles which courts take into consideration when determining whether to release the accused on bail. These include:

- i. **The Presumption of innocence Article 50 (2)(a) of the Constitution.**
- ii. **Right to liberty unless compelling reasons exist**
- iii. **Right to reasonable bail and bond terms**
- iv. **Balance of right of accused persons and the interest of justice**
- v. **Consideration of victims**

Section 123 A (1) of the Criminal Procedure Code provides for bail/bond and its exceptions. It sets out factors that the court should consider which include:

- (a) **the nature or seriousness of the offence;**
- (b) **the character, antecedents, associations and community ties of the accused person;**

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail;

(d) the strength of the evidence of his having committed the offence;

6. The second subsection provides for compelling reasons such as likelihood to abscond and for the protection of the accused person.

“(1) Subject to Article 49(1) (h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular-

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and

(d) the strength of the evidence of his having committed the offence.

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person-

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.”

7. According to the report by the Probation Officer, the accused person was raised within the county and has family ties, he thus cannot be considered a flight risk. The application was not opposed by the state. There are no compelling reasons to deny him his constitutional right to bail. I will therefore allow the application for bail. I order that –

1. The accused shall be released on bond pending the hearing and determination of the case.

2. The accused will sign a bond of Kshs 500,000/- plus one like surety.

3. The accused will attend court as and when required until the case is finalized.

4. The surety be approved by the Deputy Registrar.

Dated at Kerugoya this 14th day of August 2020.

L. W. GITARI

JUDGE