



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 33 OF 2020

FLORIDA AMBANI ATIELE..... ACCUSED

SILAS AMBAYE KHAENGA ACCUSED

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONSRESPONDENT

RULING

The applicants herein **FLORA AMBANI ATIELE** and **SILAS AMBEYI KHAEGA**, made their applications for bail on 17.7.2020. Both through their advocates basically submitted that bail is a constitutional right of an accused person irrespective of the seriousness of the offence. That the objections raised by the prosecution side that there is overwhelming evidence against the applicants and they are likely to intimidate witnesses, have not been proved and so do not amount to compelling reasons, it was also submitted that the applicants have fixed abodes and are not flight risks.

Ms. Kimani counsel for the state, opposed the application of the applicants. First, that if released the applicants stand to be attacked by members of the public. And so for their own security, they ought to be remanded in custody. It was claimed that the 2 applicants are likely to interfere with the witnesses who are their neighbours. And that because of the seriousness of the offence, they are likely to abscond if released on bail. And finally, that their places of abode are not known, neither are they gainfully employed.

I have considered the submissions of both the defence side and the prosecution sides on this application for bail. Under Article 49(i)(h) of the constitution:

“an arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The constitution of Kenya therefore guarantees any accused person the right to bail pending trial. And this right is extended to all accuseds irrespective of the seriousness or otherwise of the charges they are facing. However, there is a proviso to this general right to bail. That the right to bail may be denied where there are compelling reasons. Reasons that would be grave enough as to justify the denial of this right. Once the accused has made his application for bail, as in our case, it is incumbent on the prosecution to prove the existence of such compelling reasons.

The prosecution herein has raised a number of reasons as compelling reasons as against both the accused:

- i) THAT they ought to remain in custody for their own safety and security.
- ii) THAT they are likely to interfere with the witnesses.
- iii) THAT both are flight risks in view of the seriousness of the charges they are facing.
- iv) THAT the accuseds have no known places of abode or any gainful employment.

This court has severally held that for the prosecution to succeed in an objection such as this, it must prove the existence of such compelling reasons. Mere allegations about the existence of the same cannot suffice. In our case, the prosecution did not prove the following:-

- a) Any actual dangers to the lives of the accuseds should they be released on bail.
- b) Any real or attempt at interference with any of the prosecution witnesses.

c) Any proof of any attempt at escaping or likelihood of absconding should they be released on bond.

At paragraph 4.9 of the Bail Bond policy guidelines, the primary factor to be considered in the grant denial of bail is whether the accused person will appear for his trial. In the case of Republic Versus Dwight Sagary & 4 others (2013)eKLR, however, the court ruled that the court may impose strict conditions to ensure the attendance of the accused in cases where there are fears of absconding.

On the other objections raised that accuseds do not have any fixed places of abode or gainful employment, this court is not convinced that these objections were proved either. There has been no attempt on the part of the investigating officer to investigate on whether indeed the 2 accuseds have no fixed abodes or any gainful employment.

This court is further not convinced that released of the accuseds on bail will lead to a disturbance of peace or public order as alleged.

In total, this court is convinced that the prosecutions has failed to establish any compelling reasons that would make this court deny the accuseds their constitutional right to bail. I therefore dismiss the objections raised by the prosecutions and order as follows:-

1. Each of the 2 accused may be released on a bond each of Ksh.1million with 1 surety each of a similar amount.
2. The accuseds are ordered not to contact and or interfere with any prosecution witnesses either directly or by proxy till this case is determined.
3. The accuseds are ordered to declare specifically their places of abodes as a conditions for their release.
4. Accuseds are ordered to attend court at all times as may be ordered from time to time by the court.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Court:

Ruling read out in presence of Ms. Gikonyo for the state, Ms. Waweru for accused 2 and for Ms. Omungala for accused 1 and accuseds.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020