



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL CASE NO. 7 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH OTIENO OCHIENG.....ACCUSED

RULING NO. 2

1. The accused seeks *review* of the *refusal* of bail made on 13th September 2019.
2. He contends that the court *misapprehended* some facts; and, that he is suffering from a serious ailment which has been exacerbated by the *Covid-19* pandemic. Those matters are pleaded at length in the notice of motion dated 8th July 2020.
3. In the impugned ruling, I found as follows:

[13] I commiserate with the accused. But there are three compelling reasons for denial of bail. Firstly, the accused disappeared from the locus in quo in Murang'a. He was arrested days later in Muhoroni, Kericho County through mobile phone tracking. It may be true that he had been invited to take the trip by his friend, Rodgers Namukuro. But the statement by Namukuro filed with the committal bundle states that the accused tried to sell him a television set in Nairobi which is alleged to have been taken from the house of the deceased. I remain alive that these are mere allegations at this stage.

[14] Secondly, on 17th May 2019, the accused was escorted to his residence in Nairobi for further investigations. He then attempted to escape through a balcony but was restrained by the police. It is alleged that he took a knife and stabbed himself in the lower abdomen. The matter is the subject of separate criminal proceedings in Murang'a Chief Magistrates Criminal Case 583 of 2019. The less I say about it the better.

[15] Thirdly, I find that two of the state witnesses, Rodgers Namukuro Onyango and Mary Amollo are close associates of the accused. There is thus a real likelihood of interfering with the witnesses or evidence in the murder trial.

4. Learned counsel for the accused submitted that the court *erred* in reaching those conclusions or made "*conclusive factual findings*". If that be the case, then the remedy may lie in an *appeal*. It clearly falls outside the scope of *review*.
5. The only new matter before the court is the serious medical condition afflicting the accused. From the report dated 7th July 2020 by *James Gathuku*, the Principal Clinical Officer at Kerugoya G. K. Prison, the accused is suffering from severe low back pain due to prolapsed intervertebral disc; piles (bleeding from the anal opening); and, *otitis media* on several occasions.
6. Due to the *Covid-19* pandemic, the physiotherapy sessions at Kerugoya Hospital were interrupted. I thus agree that there is a real risk of his debilitating condition going further south.
7. Furthermore, in an inexplicable about-turn, the learned Prosecution Counsel, *Mr. Mutinda*, now says that the Republic does *not* contest bail. This is in stark contrast to the earlier replying affidavit sworn on 30th August 2019 by *Police Sergeant Kasuni*, the investigating officer; and, the comprehensive *pre-bail report* dated 29th July 2019 by *Ms. Agnes Kamindu*, the County Director of Probation and Aftercare Services.
8. The overarching objective of bail is to ensure the accused *attends* his trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).

9. Granted those circumstances and the interests of justice, I will review the order made on 13th September 2019. However, I will impose *stringent conditions* to ensure that the accused does *not* interfere with *witnesses*; or, lose sight of the *gravity* of the *charge*; and, more importantly, to ensure that he *attends* the trial.

10. The accused shall be released upon execution of a bond in the sum of *Kshs 1,000,000* together with *two* sureties of a similar amount. The sureties shall be *examined* and approved by the Deputy Registrar of this Court.

11. There are two further *conditions*. First, the accused shall *not* have any *direct or indirect* contact with the *fifteen* witnesses named in the *information* charging him with murder. Secondly, he shall attend *all* mentions or hearings of this case.

12. In default of *any* of the *two* conditions above, his bond shall stand cancelled; and, the sureties shall be called to account.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 29th day October 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Accused (absent due to the Covid-19 pandemic prison protocols).

Mr. Gitonga for the accused.

Mr. Mutinda for the Republic.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.