



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 39 OF 2020

REPUBLIC.... DIRECTOR OF PUBLIC PROSECUTION

VERSUS

PATRICK NTARANGWI ACCUSED PERSON

RULING

- 1. PATRICK NTARANGWI (the accused)** has been charged with the offence of murder contrary to *section 203 as read with 204 of the Penal Code*. The particulars of the offence are that on the 23/9/2019 at Akirangondu Location Machungulu Sub-location, Igembe North Sub County within Meru County with others not before court, the accused murdered **Daniel Mwithalie (the deceased)**.
- On 27/7/2020, the accused made an oral application to be released on favourable bond terms. A pre-bail report was subsequently filed and is on record. The same was critical of the accused.
- The prosecution opposed the application through the affidavit of **CPL Julius Ronoh**, the investigating officer, sworn on 21/9/2020. He deposed that during the course of his investigations, he established that the community was not in good terms with the accused due to his previous criminal activities. That the accused and his extended family are still engaged in a land inheritance tussle which was the cause of the assault against the deceased. That this may culminate in more bloodshed.
- He further stated that the accused has another pending criminal case of malicious damage vide **Cr. 2856 of 2019 at Maua Law Courts**. That given his position in the society, the accused may interfere with the witnesses who are vulnerable and his life may also be in danger.
- The pre-bail report was not favourable to the accused. It stated that close family members and the community was against his release. It alleged of the accused's previous criminal conduct and the likelihood of his intimidating the witnesses, interfere with the investigations and water down the evidence un this case.
- The Court called upon the accused to respond to the allegations made in the pre-bail report and the nvestigations officer's affidavit. He did so through the replying affidavit sworn on 16/9/2020. He stated that he was not a flight risk as he has a fixed abode. That there was no likelihood of his interfering with the witnesses as he has been in his home ever since the incident that led to the demise of the deceased occurred on 23/9/2019. That although the deceased died on 6/12/2019 he was only arrested on 10/7/2020 and all this time he was in his home.
- He denied that he would attack members of the deceased's immediate relatives stating that he had not done so all the time until his arrest in July, 2020. He also denied the allegations made that he had previously assaulted his mother or killed a neighbour as he had never been charged for the same.
- Lastly, he denied having been charged in **Maua Cr. Case No. 3135 of 2019**. That he has a similar case in **Maua Cmcc Elc case No. 169 of 2019** where he had sued Martin Gikundi in respect of land **Parcel No. Igembe/Central/Akirangondu "A"/1760**. He contended that the probation officer ought to have heard him first before making his final conclusions in his report. He relied on **Sudi Oscar Kipchumba v Republic (Through National Cohesion & Integration Commission) [2020] Eklr**, and urged that his application be allowed.
- The right to reasonable bail/bond terms is anchored in **Article 49 (h) of the Constitution**. It can only be denied if there are compelling reasons. In **Republic v Francis Kimathi [2017] Eklr**, it was held: -

“... There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will

not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution ...”.

10. I have considered the representations of the parties. The prosecution alleged the likelihood of interference with witnesses and that the accused is a flight risk. The accused denied those allegations and asserted that he has a fixed abode.

11. The accused contended that he was charged almost 10 months after the date of the incident. That all this while, he was residing at his home which is the common residence with the alleged witnesses. That no charges had been preferred against him for alleged previous crimes.

12. In considering the question of bail or bond, the court should balance the right of an accused, pursuant to the presumption of innocence, to be released on bail pending his trial against the public interest of prevention of crime and the right of the victims to access to justice. The right of the victims to access justice no doubt will be gravely affected if the prosecution witnesses are interfered with.

13. Further, the Court should also consider the nature of the offence. The more the serious the offence the stiffer is the sentence, in the event of a conviction, and the more likely that an accused may disappear. Murder is a very serious offence. It is more attractive to disappear as a self preservation instinct for a murder suspect than that of other less offences.

14. In the present case, the deceased and the accused were related. They lived together. The accused lives with the relatives of the deceased who are said also to be related to the accused. Those are the ones who are said to be the witnesses.

15. The pre-bail report was critical of the accused. Although the accused denied the contents thereof, he never explained why an impartial third party, the probation officer would be biased against him. The report contains what the officer collected from the community. This Court is inclined to believe the report as the same was made by a disinterested party, the denials of the accused notwithstanding.

16. The likelihood of interference of witnesses is not far fetched. The prebail report and the investigations report have indicated that the relatives of the accused are worried if the accused is released. These are the witnesses who will be expected to testify against him at the trial. It is more likely that they may be scared stiffly by the presence of the accused amongst them.

17. In **Republic v Fredrick Ole Leliman & 4 others [2016] Eklr**, the Court held: -

"In my view, the above fears are not mere whims on the part of the prosecution. I am persuaded that because of the volatility of the situation on the ground, the temptation to jump bail is heightened to such an extent that this court cannot overlook it. It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility. In addition, the fact that the accused persons are so many is likely to send a cold shiver down the spines of such witnesses and corner them into resigning not to appear in court during the hearing of the case even if the accused persons turn up. In a nutshell there will be no witnesses to testify. As Makhandia J (as he then was) said in the Kiteme Maangi case (above), Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety."

18. Similarly in **K K K v Republic [2017] Eklr**, the Court held: -

"... In considering the question of bail in this matter, the court must balance the right of the accused pursuant to presumption of innocence to be released on bail pending his trial against the public interest in prevention of crime and access to justice by the victims of crime by successful prosecution of offences, which would no doubt be adversely affected by interference with witnesses and evidence relied on by the Prosecution to prove its case. The key is in adopting a path that ensures prosecution of the offences in a manner that is least restrictive of enjoyment of the accused's right to bail. Where an expedited hearing is possible, the same should be ordered; where the witness protection measures guarantees no interference of the complainant or other witnesses by the accused, he may be released on bail as with where the evidence may be secured; and where the witnesses are prone to interference by the accused or other persons for his benefit, the testimony of such witnesses should be taken before the accused is released on bail...". [Emphasis mine]

19. I agree with the above sentiments and reiterate them here. The circumstances of this case, being that the witnesses are close relatives of the accused and live together, the likelihood of interference of witnesses is not far fetched.

20. The accused is said to be a person of questionable character and the community is fearful of him. The fact that he had not fled between December, 2019 and July, 2020 is no reason to believe that he cannot disappear now. By that time he had not been charged. There is also a case pending against him before the Maua Court, *to wit*, **Maua Cri. Case No. 2856 of 2019**. All these are but compelling reasons which persuade this court to deny the accused bail.

21. Accordingly, the application is hereby declined. The accused is to conduct his trial while in custody. He may renew the same after crucial witnesses have testified.

DATED and DELIVERED at Meru this 29th day of October, 2020.

A. MABEYA FCI arb

JUDGE