

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 7 OF 2019

REPUBLIC.....DPP

VERSUS

BERNARD KIPKEMOI KIRUI.....ACCUSED

RULING ON BAIL

1. The Accused is charged with three counts of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. He is alleged to have murdered Amos Kipngetchi(11), Vincent Kiprotich(8), and Emmanuel Kiprono(5) on the night of 21st March 2019 at unknown time in Magutek village of Lelaitich sub location in Sigor Division, Chepalungu sub county within Bomet County.

2. The Accused took plea on 25th April 2019 before Muya J and denied all the charges. His application for bond was deferred to a later date. When the matter came up before me for directions on 12th November, 2020, Ms. Chemutai learned defence Counsel made an oral application for the Accused to be released on bail pending trial. In response, Mr Mureithi for the prosecution submitted that he had not seen the social inquiry report in respect of the Accused and would not oppose the application if the said report was favourable to the Accused.

3. I have considered this application from the premise that under Article 49(1)(h) of the Constitution, an accused person has a right to bail pending trial where there are no compelling reasons. Where the State objects to the grant of bail, it bears the duty to demonstrate any compelling reasons to the attention of the court. See **R. Vs Danson Mgunya & Anor, 2016 eKLR.**

4. In this case the State through the prosecution has opted to cast its lot with the social inquiry report. I have looked at the probation officer's report filed in court on 23rd May, 2019. The report shows that the accused was the father of all three deceased children whom he is alleged to have killed. The report also shows that the family was in shock and panic as a result of the offence. The report further states that the community described the Accused as a person given to frequent quarrels. In sum, the social inquiry report is not favourable to the Accused at all. His family members who were interviewed were reluctant to have him released back home. They expressed fear as a result of the shocking act that the Accused is alleged to have committed by taking the lives of his three children and threatening other members of the family. Indeed no relative was willing to stand surety for him.

5. It is apparent to the court therefore the Accused may interfere with the flow of justice in this case through interfering with witnesses, and; intimidating and threatening to visit further violence on family members. I agree with the profound reasoning of Lesiit J in **R. V. Fredrick Leliman & 4 others, Criminal Case No 57 of 2016** where she stated that:-

“Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger and individual or individuals or the public at large; likelihood the accused may commit other offences. In this instances where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail term; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention.”

6. In this case therefore I must balance the Accused's right to liberty and the rights of the Accused's family and the community to live in peace and without fear of sporadic attacks and possible injury by the Accused. The family members who are also the victims of the offence must feel safe and not endangered while the trial is going on. I find that it is necessary to safeguard the integrity of the trial in this case and to protect the victims who are family from further possible harm by the Accused. These to my mind are compelling reasons not to admit the Accused to bail.

7. I am therefore persuaded to deny the Accused bail. He shall remain in custody pending trial or until further orders of this court.

Ruling delivered, dated and signed this 30th day of November, 2020.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Counsel Ms. Chemutai, Mr. Mureithi for the DPP, and Kiprotich(Court Assistant).