



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 18 OF 2019

REPUBLIC.....DPP

VERSUS

BONIFACE KIBET KOECH.....ACCUSED

RULING

1. The Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence are that on the 1st day of August, 2019, at Sotik township in Sotik Sub - County within Bomet County murdered Aaron Kipkoech Rotich.

2. The Accused took plea on 17th September, 2019 before Dulu J and denied the charge. On the same date, Mr. Kipn'getich for the Accused made an application for a social inquiry report to be filed in respect of the accused to aid in his bail application. During the mention of the case on 3rd October 2019, Mr. Kipn'getich informed the court that he had been served with the probation report and asked for a further mention at a later date.

3. When the matter came up before me for directions on 19th October, 2020, Ms. Chirchir for the defence made the application for the accused to be released on bail pending trial. She submitted that the Accused was a resident of Bomet and was not a flight risk. She prayed for reasonable bond terms. On his part, Mr Waweru for the prosecution opposed the application. He submitted that the probation report was not favourable to the Accused. That the report showed that there was hostility on the ground between the family of the Accused and that of the deceased. Counsel also submitted that the Accused was likely to interfere with witnesses.

4. I have considered the application. On record is a pre - bail report in respect of the Accused dated 3rd October, 2019. The report states that the deceased and the accused came from the same neighbourhood and that the deceased's family was still very bitter with the Accused and desired that he remains in remand as they come to terms with the loss of the deceased. The report also stated that the Accused was an orphan and had dropped out of school in Class 7. He was a boda boda rider at the time of the alleged offence.

5. I agree with the prosecution that the probation report was not favourable to the Accused. However, I observe that the report was prepared a year ago and that it is possible that the hostility on the ground must have eased. I must also dismiss the prosecution's allegation that the Accused was likely to interfere with witnesses. This is because prosecution did not present any material to the court to demonstrate the likelihood of such interference. The least the prosecution should have done was to show any proximity between the Accused and the witnesses. Witnesses are real human beings who have an identity and such witnesses and their vulnerable positions which would make them susceptible to interference ought to have been revealed to the court.

6. Article 49(1)(h) of the Constitution grants an accused person the right to bail bond pending trial unless there were compelling reasons. In this case, I have found no compelling reason to deny the Accused bond.

7. The Accused is granted bail/bond on the following conditions:-

- i. He shall post cash bail of Kshs.300,000/= with one surety of similar amount.
- ii. As an alternative to 1 above, the accused shall execute a personal bond of Kshs.300,000/= and provide 2 sureties of Kshs.300,000/= each.
- iii. He shall not interfere with witnesses in any way.
- iv. He shall attend court whenever required and shall not impede the trial in any way.

8. Orders accordingly.

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 Mr Korir, Mr. Mureithi for the DPP, and Kiprotich (Court Assistant).