



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. 3 OF 2020

RICHARD NGETHE WANJIRU.....ACCUSED

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

RULING

The accused, **RICHARD NGETHE WANJIRU**, has applied that he may be released on bail pending the determination of his trial. Mr. Karanja, acting for the accused, has submitted that bail is a constitutional right only to be denied upon proof of existence of compelling reasons. He denied that accused is a flight risk. Rather, that his home address is well known. Counsel gave the undertaking that accused shall if released, abide by any conditions that the court may impose to secure his attendance.

The prosecution, through Ms. Kimani, opposed this application. First, it was submitted that the accused is a flight risk. That whereas the offence was on 23.12.2019, it was not until 28.12.2019 that the accused was arrested by members of the public. Secondly, that accused has no known place of abode, as he had only been living in the house of the deceased.

It was further submitted that the prosecution has a strong case against the accused and that he is likely to interfere with the witnesses who are his neighbours.

And finally, that it would be in the interest of public order that the accused be remanded in custody as releasing him on bond would be putting his life to danger as the situation is still volatile.

Under Article 49(1)(h) every accused person has a right to pre-trial bail. However, the said provision also declares that the right to bail may be denied should the prosecution prove the existence of compelling reasons. Simply put where there are good reasons that could justify a denial of the right to bail, then the same may be denied.

As to what would constitute compelling reasons, the comprehensive guide on Bail-Bond policy developed by the Judiciary gives guidelines on factors that may be considered to be compelling reasons. At paragraph 4.9, some of the following considerations mentioned are:

- **Strength of the prosecution's case**
- **The nature of charge and the probable sentence in case of conviction.**
- **Whether the accused is a flight risk**
- **Whether he has a place of abode**
- **Likelihood of interference with witnesses or investigations.**
- **Character and antecedents of the accused.**
- **Public order, peace and security.**
- **Accused's own safety.**

The prosecution in this case has cited the following as compelling reasons:

- i. That the accused is a flight risk.**
- ii. That he is likely to interfere with the witnesses**

iii. That accused has no place of abode.

iv. For accused's own security.

These are the allegations made by the prosecution. As the maxim goes, "He who alleges must prove" it is incumbent upon the prosecution to prove as a matter of facts, each and every allegation it has made in opposing the release of accused on bond. With respect, no attempt was made at proving these claims raised in opposing the application. In the absence of any such proof, these allegations cannot stand as compelling reasons.

I am convinced that this is a case fit for the applicant to be released on bail on suitable conditions. I therefore order that the applicant may be released on bond on the following terms.

i. The applicant may be released on bond of Ksh. 1 million with 1 surety of a similar amount.

ii. That in the alternative, the applicant shall be released upon depositing of Ksh. 300,000/= cash bail.

iii. That applicant (accused) is ordered never to interfere with the prosecution witnesses, either directly or indirectly till this case is heard and determined

iv. That the applicant is ordered to be attending court of all times as ordered by the court, till this case is determined.

v. That applicant, before being released, to specifically state and confirm his next place of abode away from the alleged. Neighbourhood scene of crime herein. The surety's Identity or Identity card (copy) of depositor of cash bail to be placed on the file.

HON. JUSTICE D. OGEMBO OGOLA

17th November 2020

Court:

Ruling read online in the presence of Mr. Karanja for the applicant, and Mr. Naulikha for the state

HON. JUSTICE D. OGEMBO OGOLA

17th November 2020