



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL CASE NO 2 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**POROU LEMPOROS.....ACCUSED**

**RULING ON BAIL**

1. The Accused in this case, **POROU LEMPOROS**, is charged with **murder** contrary to **sections 203 and 204** of the **Penal Code**. It is alleged in the information dated 05/02/2020 that on 22/01/2020 at Sirata Location, *Samburu Central Sub-County* within *Samburu County*, he murdered one **NEWTON SANKAN LESIKINWA**.

2. On 10/02/2020 the Accused pleaded not guilty to the charge. His trial was scheduled to commence on 21/04/2020; however, the Coronavirus (COVID-19) pandemic happened, and the trial was delayed. Another date for trial shall be given on 17/12/2020 at the delivery of this ruling.

3. The Accused has asserted his constitutional right to bail pending his trial. The Republic has opposed bail by an affidavit filed on 18/02/2020 sworn by the investigating officer of the case. The reasons advanced for opposing bail are –

(i) That the Accused is a flight risk in that he has no known permanent residence.

(ii) That he is likely to interfere with prosecution witnesses as they are well known to him “...because they had been living together and the accused had been doing casual labour from their farms on different occasions.”

4. In a replying affidavit filed on 14/10/2020 the Accused has asserted as follows –

(i) That he has a permanent residence within **Maralal Town** where he lived with his two wives called **REGINA LAMPOROS** and **ASHWA LEMPOROS** and their total of 13 children.

(ii) That at the time of his arrest he was gainfully employed as a security guard at a farm owned by one **Nderok** where he has worked for several years.

(iii) That his many children are young and they and their mothers depend on his income, and that therefore he is not a flight risk.

(iv) That he does not have any close relations with the prosecution witnesses and has no capacity to interfere with them.

5. I have considered what has been urged in the two affidavits and the submissions of the learned counsels in the matter. I have also perused the witness statements and documentary evidence, copies of which were supplied by the prosecution to the Accused and to court.

6. Bail pending trial is now a constitutional entitlement in all criminal offences. It will be denied only for compelling reason; and any conditions that the court might impose, again by constitutional edict, must be reasonable. See **Article 49(I) (h)** of the **Constitution of Kenya, 2010**.

7. Flight risk and likelihood of interference with witnesses, if proved on balance, are compelling reasons to deny an accused person bail, one because he will not turn up for his trial as and when required, and two, because interference with witnesses will be subversion of justice.

8. In the present case, have those allegations been proved on balance? The Accused has under oath stated where his abode is. He has given the names of his two wives. He has stated that they have a total of 13 children, apparently some of them young and all depending on him. The court has not been told that the investigating officer has investigated these claims and found them untrue. There is no reason for the court to hold that the Accused’s family of two wives, 13 children, and a permanent residence within **Maralal Town** are a figment of his own

imagination.

**9.** As for the allegation of likelihood to interference with prosecution witnesses, none of them appear to be vulnerable in any way, and indeed the Accused does not appear to have any influence over them. At any rate, none of them has come forward to voice their fear of the Accused.

**10.** I do not find any compelling reason proved on balance to warrant denial of the Accused's constitutional right to bail. What is important is that reasonable conditions for such bail be imposed as will ensure that he attends court as and when required for his trial.

**11.** In the result, the Accused shall be admitted to bail upon his own cognizance in the sum of KShs 750,000/00 plus two sureties in like sum. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 16<sup>TH</sup> DAY OF DECEMBER 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 17<sup>TH</sup> DAY OF DECEMBER 2020**