



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO. 15 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DENIS ATETWE.....ACCUSED**

**RULING**

1. The accused Denis Atetwe 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 24<sup>th</sup> July 2020 at Savana club at Kapkwen market in Bomet Central Sub-county within Bomet County murdered Leonard Koech.
2. The accused took plea before me on 3/11/2020 and denied the charge. His counsel Ms. Chemutai promptly made an application for the accused to be released on reasonable bond terms. On his part Mr. Mureithi learned Principal Prosecution Counsel asked the court to direct that a pre-bail report be filed. The court acceded to the request and directed that the report be filed within 14 days.
3. When the matter came up for hearing on 2/12/2020, Ms. Chemutai submitted that the pre-bail report was not favourable to the accused. She however submitted that bail was a constitutional right. She urged the court to grant the Accused favourable bond terms.
4. The prosecution opposed the application. Mr. Mureithi submitted that the Accused was a person who engaged in drug and substance abuse. He submitted that the Accused had loose family ties and his relatives had not seen him for five years prior to the commission of the offence and were unwilling to stand surety for him as they would not know where to find him.
5. I have considered the application, the submissions of the parties and the pre-bail report dated 2/12/2020. The right to bail is guaranteed under Article 49(1) (h) of the Constitution. This right is however not absolute and may be curtailed where there exist compelling reasons.
6. Section 123A of the Criminal Procedure Code sets out the parameters to guide the court in considering an application for bail. It provides thus:-

***(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—***

***(a) the nature or seriousness of the offence;***

***(b) the character, antecedents, associations and community ties of the accused person;***

***(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;***

***(d) the strength of the evidence of his having committed the offence;***

***(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—***

***(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;***

**(b) should be kept in custody for his own protection.**

7. The Judiciary's **Bail and Bond Policy Guidelines, March 2015** sets out judicial policy at p. 25 on bail as follows:-

**The following procedures should apply to the bail hearing:**

**(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:**

- a. That the accused person is likely to fail to attend court proceedings; or**
- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or**
- c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or**
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or**
- e. That the accused person is likely to interfere with witnesses or evidence; or**
- f. That the accused person is likely to endanger national security; or**
- g. That it is in the public interest to detain the accused person in custody.**

8. I have given consideration to the principles and guidelines espoused above. It cannot be over emphasized that the primary purpose of bail is to secure the accused's attendance at trial. In the present case, it has been demonstrated that the Accused person has no known abode. The social inquiry report showed that he has loose family ties and his relatives did not know where he lived or had been for the past five years prior to the offence. It follows therefore that if released the Accused was likely to abscond trial and defeat justice. These are compelling reasons which warrant denial of bail.

9. I am persuaded that the Accused may abscond trial. His application for bond is denied. He shall remain in custody pending trial or until further orders of this court.

10. Orders accordingly.

**Ruling delivered, dated and signed this 16<sup>th</sup> day of December, 2020.**

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**R. LAGAT-KORIR**

**JUDGE**

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