



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 27 OF 2018

PROSECUTOR.....REPUBLIC

VERSUS

ISAAC KIPTOO RONO *Alias* MALAKWEN.....ACCUSED

RULING

This is a Ruling on the application for Bail pending Trial.

1. When the accused asked the Court to release him on Bail pending his trial, the prosecuting counsel indicated that he would be opposing the said application.
2. The prosecution filed an affidavit which was sworn by the Investigating Officer, Detective PC Vincent Langat.
3. According to the Investigating Officer, the accused had gone into hiding after the offence was committed.
4. Secondly, he said that the accused had tried to persuade one of the witnesses to have him released, so that he could flee to Tanzania.
5. Thirdly, the Investigating Officer indicated that some of the accomplices of the accused had gone into hiding. In the circumstances, the state was of the view that if the accused were granted Bail, he could interfere with the investigations.
6. The fourth issue raised by the prosecution was that they intended to prefer more charges against the accused, arising from the fact that a key witness had sustained serious injuries from the incident giving rise to this case.
7. The said key witness had been admitted in hospital.
8. According to the prosecution, the accused was a person of no permanent abode. It was the state's position that the accused was a squatter, living on the farm belonging to the late Omamo.
9. Considering that most of the witnesses were neighbours of the accused, the prosecution expressed fear that the accused could interfere with the said witnesses.
10. More significantly, the prosecution made reference to threats which some witnesses had received, to the effect that the accused would kill them.
11. The prosecution also said that the community where the incident happened was hostile, and was not ready to receive him. In the circumstances, the prosecution felt that it was necessary for the accused to remain in custody, for his own safety.
12. By his replying affidavit, the accused said that he is a married man, who has five children.
13. He denied being a squatter. Instead, he said that he lived on a 2 acre piece of land which had been gifted to him by William Odongo Omamo.
14. The accused told the court that he earns his livelihood through large-scale sugarcane farming (on parcels of land which he leases); and also from his business as a Cattle trader.
15. The accused categorically denied the contention that the community was hostile to him.

16. And as he had been in prison custody from the time of his arrest, the accused denied having issued threats to any witnesses.
17. As regards some accomplices who were still in hiding, the accused pointed out that the alleged accomplices had already been arrested and that they had been charged with the offence of Murder.
18. The alleged accomplices had been granted Bond in Criminal Case No. 6 of 2019.
19. As far as the accused was concerned, the key witness who was allegedly in hospital, was actually not in hospital. Indeed, the accused pointed out that the said key witness was in court on 7th February 2019.
20. In the event that the prosecution chose to prefer more charges against him, the accused said that the prosecution would not be hindered from doing so if he (the accused) was granted Bond.
21. By dint of the provisions of **Article 49(1)(h)** of the **Constitution**;

“An arrested person has the right –

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”
22. Kenyans have stated most emphatically that any person who has been arrested is entitled to be released on bond or bail.
23. The person can be released either before he has been charged or whilst his trial was pending.
24. The only grounds upon which the right to bond or bail can be curtailed are that there were compelling reasons why the arrested person ought not to be released.
25. Whilst the detective had described the accused as a person who had no fixed abode; a light-risk; a squatter and an un-employed man, the Probation Officer’s Bail Assessment Report gives a different picture.
26. The Probation Report confirms that the accused is a farmer, who had not changed his residence for long.
27. In one report, the Probation Officer describes the accused as a flight-risk, whilst in another report, the same Probation Officer says that the accused was a person with no likelihood to flight from the court process.
28. The two reports bear the same date, 6th February 2019.
29. It is not possible that the accused can be assessed by one person, who arrives at two distinctly different conclusions about the suitability of the accused being granted Bond.
30. If there were any particular reasons or circumstances which prompted the Probation Officer coming up with a recommendation which was inconsistent with his earlier recommendation, the said Probation Officer owed this court and the accused a detailed explanation.
31. In the absence of detailed explanations, I find that the court is unable to make an informed decision.
32. Ordinarily, that would have led to the conclusion that there were no compelling reasons, because the evidence being relied upon by the prosecution appeared to be shaky.
33. Nonetheless, I find that in matters of this nature, justice is best served when the court makes a decision based on evidence. And as I am not sure about the veracity of the evidence currently before me, I hold the view that both the prosecution and the accused will be accorded one more opportunity to provide such further evidence as they may deem relevant.
34. I direct that such evidence be in the nature of Affidavits, (as opposed to a Report). I further direct that the Probation Officer must be available for cross-examination, if the accused should be minded to test his evidence.
35. Matters which may or may not constitute a threat to peace and tranquility to the society must be taken extremely seriously.
36. Until the court has had the opportunity to give a further hearing on this issue, the accused shall remain in custody.

DATED, SIGNED and DELIVERED at KISUMU This 28th day of March 2019

FRED A. OCHIENG

JUDGE