

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

DENNIS KEMBOI.....ACCUSED

RULING

1. Before me is an application for bail pending trial brought by way of Notice of Motion dated 13th March 2019.
2. The accused stands charged with murder contrary to section 203 as read with section 204 of the Penal Code, which he is alleged to have committed on 13th January 2019.
3. Mr. Sang for the accused has urged the court to grant the accused bail. The Prosecuting Counsel Ms Keli does not oppose bail as the Investigating Officer has not given any compelling reasons for denial of bail.
4. A pre-bail report filed on 1st April 2019 signed by David Rono the Probation Officer, Kericho is to the effect that the family of the deceased is still bitter, and that for the security of the accused, bail should not be granted now, but can be considered later, after the two families try reconciliation initiatives.
5. Article 49 (1) (h) of the Constitution of Kenya 2010 confers a right to bail to all arrested persons, irrespective of the criminal allegations or charges against them, unless there are compelling reasons for denial of bail.
6. Courts have held that the burden is on the prosecution to demonstrate the compelling reasons to court for denial of bail. In the present case, the Prosecuting Counsel has stated that she has no such compelling reasons for denial of bail.
7. However, at that time the pre-bail report had not been availed. In my view, the security of the life of the accused from the hostile family of the deceased is a compelling reason for this court to deny him bail. This is irrespective of whether the information comes from the Prosecuting Counsel or from another source, provided the court believes that such a dangerous situation to the life of the accused exists. In the present case, I believe the Probation Officer's report, as he must have gone to the ground and interviewed people.
8. I thus decline to grant the accused bail pending trial at this stage. The request for release of the accused on bail can be revived at a later date, when the situation changes.
9. It is so ordered.

Dated, delivered and signed at Kericho this 30th day of April 2019.

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George Dulu

JUDGE