



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCRC NO.23 OF 2019

REPUBLIC.....RESPONDENT

VERSUS

JOSEPH KAIRU WANJIRU ALIAS JOSE.....1ST ACCUSED

RAYOND KIPLIMO.....2ND ACCUSED

RULING

1. This is a ruling on application for bond by the accused persons herein. Both accused persons have been jointly charged with the offence of Murder contrary to Section 204 of the penal code. Particulars are that on the night of 2nd and 3rd April 2019 at Subukia within Nakuru County the accused persons jointly murdered **Carol Chepchirchir Chesire**.

2. **Mr Olonye** for the 1st accused applied for bond with alternative cash bail. He relied on two affidavits sworn by the 1st accused and his mother on 14th may 2019. He submitted that article 49 of the constitution gives this court jurisdiction to grant every arrested person bond or bail. He stated that his client is an employee of prison services of the rank of constable No.48926 and that he resides in Nakuru London estate and his mother resides in Mweiga town in Nyeri and he is therefore has a place of a board. He added that being a prison officer, he intends to comply with terms of bond. He refuted the prosecutions alleging that the 1st accused is a constant absentee and that's why he should be denied bond arguing that it is an administrative issue. He argued further that, if the allegation is true the 1st accused would have been sacked as Section 16 of prisons Act lays down administrative procedures to be followed and that this court has no jurisdiction to deal with administrative issue and he should not be denied bond on an issue that should be dealt with administratively.

3. Counsel further submitted that the 1st accused can only be denied bond upon prosecution availing compelling reasons.

4. On interference with witnesses, counsel submitted that the investigating officer has not stated how the accused will interfere with witnesses and from paragraph 10 of the investigating officer's affidavits, investigations are over and the witnesses cannot interfere with statements.

5. **Mr. Mongere** for the 2nd accused reiterated submissions by counsel for 1st accused and added that the investigating officer's affidavit has nothing relating to 2nd accused save for stating that he is a flight risk. He submitted that the 2nd accused in his affidavit deponed that he presented himself to the police and that he is ready to abide by the terms of the court. On allegation of likely-hood to interfere with witnesses, Counsel argued that the witnesses have not sworn affidavits to that effect.

6. In response, **Mr. Chigiti** for the state submitted that the accused persons ceased to be arrested persons since they were arraigned in court and Article 49 is not therefore applicable as submitted by defence counsel. He argued that, accused persons can be denied bond if there are compelling reasons and the reasons are in the affidavit filed by the investigating officer. He stated that the investigating officer has annexed to his affidavit several signals from Nakuru Main prison showing that the accused persons were absent from work without permission as their whereabouts were not known by the officer in charge. He argued that the prosecution's arguments are made up of the annexures.

7. He urged court to consider the accused persons, as flight risk as they went into hiding after commission of the offence and now that they are facing murder charge, it will be difficult to trace them and given a chance, they will interfere with witnesses. He proposed that the case be heard on priority basis instead of granting accused persons bond.

8. In response counsels for accused persons submitted that the accused persons are available as the Investigating officers knows where to get them and absence from duty is administrative. Counsels reiterated that if the accused persons were habitual absentees, they would have been dismissed from work long time ago.

9. On proposal to have a quick trial, counsel submitted that the judicial officers have heavy workload and there is no guarantee that this case will be fast-tracked.

10. I have considered arguments by counsels herein. I have also perused affidavits filed. Reasons given by prosecution to oppose grant of bond are allegations of accused being flight risk and interference with witnesses.

11. I first wish to deal with interference with witnesses. On perusal of affidavit by the investigating officer, there is no mention of any particular witness who has been threatened neither has he filed an affidavit by any of the witness expressing any fears. In paragraph 9 of his affidavit, the investigating officer states that the 1st accused is a threat to witnesses who are his colleague and especially those who reside outside the prison quarters. No affidavit has been sworn by any of them. This leaves the allegations unverified and cannot therefore be compelling reason to warrant denying accused persons bond.

12. In respect to accused persons being flight risk, prosecution has availed record of attendance to work. In paragraph 6 the investigating officer averred that history at accused persons' place of work revealed that they are regular absentees. I have perused the record attached to affidavits and note that they date back to July 2018. The signals show forfeiture of salary and fine for being absent from duty. The question is, can this record assist in determining whether accused persons will comply with bond terms?

13. From records attached absence from duty were before and after occurrence of offence the accused persons are alleged to have committed. One cannot therefore conclude that incidences of absconding duty are connected to commission of an offence. It cannot therefore be used to gauge if the accused persons are likely to abscond. Further, there is no evidence that the accused persons have been subjected to any administrative process, which require employer giving them an opportunity to be heard. Reliance on the record to deny accused persons bond will result to infringement of their constitutional right by denial of bond without prove of compelling reasons.

14. Article 50 (a) gives accused person a right to be presumed innocent until the contrary is prove. The investigating officer has indicated that the accused persons failed to attend duty after killing the deceased. As at now, the court treats the accused persons innocent until proved otherwise. Attachments to the affidavit show absenteeism before and after the alleged offence. It would therefore be inappropriate to connect absenteeism in April to the offence herein and use it as a ground to deny bond.

15. From the foregoing, I find that no compelling reasons have been advanced to warrant denying accused persons right to bond provided by the constitution in Article 49 (h).

16. I therefore find it fair and just to grant accused persons bond. Each accused person may be released on bond of Kshs.2 Million with one surety of a similar amount.

Judgment Dated, signed and delivered at Nakuru this 23rd day of May 2019.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Jared/ Schola Court Assistant

Olonyi Advocate Counsel for Accused

Chigiti Counsel for State