



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 7 OF 2019

THE STATE.....PROSECUTOR

VERSUS

EVANS NZAU ITHOKA.....ACCUSED

RULING

1. The accused person herein has brought a Notice of Motion dated 30th May, 2019 praying that he be released on bail/bond pending trial. The application is based on the following grounds:

a. *That the accused person has a constitutional right to bail pending the hearing of this case.*

b. *That the costs of the application be in the cause.*

2. The application is supported by the affidavit of the applicant sworn on 30th May, 2019. He avers that he pleaded not guilty to the charges preferred and has a permanent place of abode and that the alleged victims are his relatives; that he will abide by all the conditions that the honorable court will set and that he has young children in class three and pre-unit.

3. The State did not oppose the application. This court called for a pre-bail report to be availed.

4. I have considered the application. Bail pending trial is a constitutional right provided under **Article 49 (1) (h)** of the Constitution and which states:

“An arrested person has the right:-

To be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

5. Bail pending trial is a principle of fair trial. An accused person is presumed innocent until the contrary is proved. **Article 50 (2) (a)** provides:

“Every accused person has a right to a fair trial which includes the right to:-

a) ***To be presumed innocent until the contrary is proved.”***

6. The right to bail can only be denied if the State proves that there are compelling reasons not to grant bail. The burden is on the prosecution. In the case of the **Republic v Danson Ngunya & Another (2010)eKLR** the Court stated:-

“In my judgment, the practice should never be to require the State to prove to the satisfaction of the Court that in the circumstances of the case the interest of justice requires the accused to be deprived of his right to be released from detention. The burden should be on the State and not the accused. He who alleges must prove. That is what we have always upheld in our courts. If the State wants the accused to be detained pending his trial then it is up to the State to prove when the Court should make such an order.....”

7. The State did not oppose the release of the accused on bail. I have considered the Judiciary Bail Policy guidelines. The Policy guidelines defines a bail report as follows:

“A social enquiry report based on information generated about the background and community ties of an accused person, and its purposes are to verify information provided to Court by the accused person, to assess the likelihood that the accused person will appear for trial and enable the Court to impose reasonable bail terms and conditions.”

At Chapter 4:26 it is stated:

“The Court may request for a bail report where it considers that it does not have sufficient information to make a fair and appropriate bail decision including the following instances:

- a. Where there is doubt on the information on the accused person relating to the grant of bail;***