



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NANYUKI

CRIMINAL CASE NO 11 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL KATOIYE LELEIYO.....ACCUSED

RULING ON BAIL

1. The Accused in this case, **SAMUEL KATOIYE LELEIYO**, is charged with *murder* contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the information dated 29/05/2019 that on 20/05/2019 at **Riverside Gardens & Cottages, Chaka** in Kieni East Sub-county of Nyeri County, jointly with others not before court, he murdered one **ERICK MUTHE MAINA**.

2. On 10/06/2019 the Accused pleaded not guilty to the charge. His trial was scheduled to commence on 29/10/2019, but could not proceed on account of an older murder case which came up for further hearing on the same date. The case is now scheduled to commence hearing on 18/02/2020.

3. The Accused has in the meantime asserted his constitutional right to bail pending his trial. The Republic has opposed bail by an affidavit sworn by the investigating officer of the case, one **Sgt Hussein Liga**, filed in court on 18/06/2019. The grounds for opposing bail are -

- a. That the Accused is a flight risk because he has no known permanent residence, and the case against him is “*very strong*”.
- b. That he is likely to interfere with witnesses.
- c. That there are other suspects still at large who “*are likely to cause the accused to disappear so that he does not expose them*”.

4. The Accused filed a replying affidavit on 18/07/2019 in response to the investigating officer’s affidavit. In it he denies that he is a flight risk or likely to interfere with witnesses. He further states that he is a resident of **Kimagandura Sub-location** and well-known by the area chief, and further, that he has a wife and child who look up to him, and that therefore he is not a flight risk.

5. The Accused has also stated in his affidavit that he was arrested less than 24 hours after the alleged offence was committed; that he has fully co-operated with the police since he was arrested; that nothing incriminating was recovered from his person when he was arrested; and that he is a man of meager means with no capacity or influence to be able to interfere with witnesses who include police officers, his former employer and his former workmates who were higher in rank than him.

6. I have considered the oral submissions of the learned counsels appearing, including the cases cited.

7. Bail pending trial for any criminal offence is now a constitutional right that will be denied only for **compelling reason**. Further, any condition for such bail that the court might impose must be reasonable. For all that see **Article 49(1)(h)** of the **Constitution of Kenya, 2010**.

8. Where bail is granted, terms thereof must be such that will ensure that the accused person attends his trial as and when required by the court, to the final conclusion of the case.

9. The onus is upon the prosecution to establish by evidence, and on a balance of probabilities, any compelling reason urged. It is not enough merely to put forward apprehensions that are not based on some evidential platform.

10. The prosecution has urged that the Accused is a flight risk on two grounds-

i. That he has no known permanent place of abode.

ii. That the case against him is “*very strong*”.

That second reason can be dismissed right away. The perceived strength of the prosecution case can never be a compelling reason to deny an accused person his constitutional right to bail.

11. As for the first reason, it is really within the realm of an accused person, in response, to provide adequate details of his permanent abode if he has one, so that the same can be verified. The Accused herein has stated merely that he is a resident of Kimagandura Sub-location. He has not stated the village or locality where his residence is, what kind of residence it is, or even the nearest trading centre. He has also stated that he is well known by the “*area Chief*”. He has not given the name of that chief. My take on this issue is that the Accused has failed to give full and proper details of his permanent residence because he does not have one. In the event of failing to attend court while out on bail it would indeed be very difficult for the police to trace and apprehend him. That would entirely sabotage his trial. It is a compelling reason to deny him bail.

12. As for the allegation that the Accused is likely to interfere with witnesses, I have perused the witness statements provided to the defence and to court by the prosecution, and have noted the advanced motive for the commission of the alleged offence. Without in any way at all compromising on the presumption of innocence that the Accused enjoys under the law, I am persuaded that there is a strong likelihood of interference with some of the witnesses. Such interference would sabotage the fair trial of the Accused, and is a compelling reason to deny him bail.

13. As for the third compelling reason urged, that is, that there are other suspects still at large who “*are likely to cause the Accused to disappear so that he does not expose them*”, I can only say that it is speculative and not borne out by any evidence. I dismiss the same out of hand.

14. The upshot is that there are indeed two compelling reasons sufficient to deny the Accused his constitutional right to bail pending trial. He shall remain in custody for the duration of his trial. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 30TH DAY OF OCTOBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 31ST DAY OF OCTOBER 2019