



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL (MURDER) CASE NO. 48 OF 2017

REPUBLICPROSECUTOR

VERSUS

VINCENT MLUHAVI DANGWALI.....ACCUSED

RULING

Introduction

1. This ruling relates to an application for bond pending trial. The application was made orally in court by Mr. Aburili, counsel for the accused. This was on 30.11.2017. In response to the application, Mr. Paul Juma prosecution counsel, urged the court to ask for a pre-bail report before rendering a ruling on the application. That report has now been filed.

Background

2. The accused herein, Vincent Mluhavi Dangwali who is aged 18 years or thereabouts is on trial for murder contrary to section 203 as read with section 204 of the Penal Code, the particulars thereof being that on the 13.11.2017 at around 1830hrs at Hamoi Village within Vihiga County, jointly with another not before the court he murdered Humphrey Muzore. He denied committing the offence and is awaiting trial.

Basis of the Application

3. The application for bond is anchored in Article 49(1)(h) of the Constitution of Kenya 2010 which provides that every arrested person is entitled “to be released on bond or bail on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” The duty to give compelling reasons that would warrant an arrested person being denied bond or bail rests squarely on the prosecution. This is very unlike the position which prevailed prior to 27.08.2010 when an arrested person had to show cause why bond or bails should be granted to him. Further, prior to 27.08.2017, persons arrested in connection with murder, treason, violent robbery or attempted violent robbery charges were not entitled to bond or bail at any stage of the proceedings and had to stay behind bars until their case was heard and determined or until the court ruled otherwise. For such suspects who were found guilty, they would remain behind bars for life if they were not hanged.

4. The Criminal Procedure Code (CPC) Cap 75 Laws of Kenya also makes provision for bond or bail to be given by the court or the police. Section 123(1) and 123(2) of the CPC, provide that where bond or bail is granted, the amount thereof shall not be excessive and that due regard should be given to the circumstances of each case. The law also provides for sureties, before a person is released either on bond

or bail. Where the courts find it expedient, the rights of an arrested person as provided under Article 49(1)(h) may be denied in order to ensure the protection of a suspect or any witness so as to ensure attendance of both the suspect and witnesses during trial. In the recent past, the judiciary in partnership with the National Council on the Administration of Justice published “Bail and Bond Policy Guidelines” for use by the courts.

5. For purposes of this case, this court will consider whether the accused is a flight risk if released on bond and whether there are any other compelling reasons why the accused should be denied bond or bail.

The Pre-Bail Report

6. The report is dated 14.12.2017. From the report, the accused is a class three drop out due to poor performance and though still young, he is said to have a daughter, but no wife. Two of his older siblings have disappeared from home without trace. While the accused’s mother is alive, his father died in 2010. While the mother defends the accused as a person of good character, the community alleges that he is unruly and troublesome, even to his own mother. He is also said to have weak community ties which are attributed to his alleged unruly behaviour. He and his friends spend much time at video dens.

7. The report also shows that the victim’s family is still very bitter about the death of their young member of the family and are prepared to harm the accused if he is released back into the community. On the other hand, the accused and his family are crying for bond. The accused’s mother says she will hide him in Kitale area at the home of one of her brothers.

Analysis and Determination

8. I have carefully read through the pre-bail report and the only issue for determination is whether in the circumstances presented in the report the accused should be granted bond. It is my considered view that though the report is positive on the issue of bond, it would be unsafe to release the accused at this stage. In the first place, the atmosphere on the ground is very hostile, and chances are that the accused may be lynched if he is seen within the community. Secondly, though the accused’s mother proposes to hide the accused at the home of one of her brothers in Kitale, I am convinced beyond doubt that the accused is a flight risk. He has been known to be unruly and troublesome and there is nothing that will stop him from jumping bail, especially in view of the fact that two of his older brothers have disappeared from home without trace. The application for bond is accordingly refused.

9. However, because of the age of the accused, this court is prepared to fast track the hearing of his case. This will ensure that he does not remain in remand for an unduly long time. This approach should be quick because all the statements are on the file and all of them are relatively brief.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 18th day of January, 2018

RUTH N. SITATI

JUDGE

In the presence of

.....Mr. Aburili (present).....for Accused

.....Mr. Ngetich (present).....for state

.....Polycap Mukabwa.....Court Assistant