



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 67 OF 2016

REPUBLIC PROSECUTOR

V E R S U S

JACOB SANG ALIAS KIPLAGAT ACCUSED

RULING

1. The accused *Jacob Sang* alias *Kiplagat* faces a charge of Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. It is alleged that on 26th September, 2016 at Kapchemoiywa sub location of Nandi County, he murdered *Colleta Kitur*.

2. The accused denied the charges. His learned counsel *Mr. Oburu* made an oral application seeking that he be admitted to bond pending the conclusion of his trial.

3. The application is contested by the state through a replying affidavit sworn by the investigating officer *CPL Fredrick Odemba*. In paragraph 3 of the affidavit, the investigating officer opposed the accused's plea for bond pending trial on grounds that due to the gravity of the offence, the accused might be tempted to abscond trial; that he was likely to interfere with witnesses two of whom are his immediate neighbours; that he is viewed as a dangerous person by members of his community and if granted bond, his safety will be compromised.

4. Relying on the replying affidavit, learned prosecuting counsel *Ms. Kigegi* urged me to reject the application for now until the two witnesses who were the accused's neighbours testified. Her sentiments were supported by learned counsel *Mr. Miyienda* who held a watching brief for the deceased's family on behalf of *Dr. Chebii*.

5. To counter the averments in the replying affidavit, the accused swore an affidavit on 2nd February, 2017 in which he denied that he was a flight risk and that if granted bond, he would interfere with witnesses. He contended that he had no intention of absconding trial or interfering with any witness. He claimed that the hostility that was on the ground immediately after the deceased was murdered had

withered away with the passage of time as indicated in the pre-bail report. He beseeched the court to allow the application.

6. I have considered the application, the affidavits filed by both parties, the pre-bail report filed on 25th November, 2016 and the submissions made on behalf of the state, the deceased's family and the accused.

It is now settled law that bond pending trial is a constitutional right guaranteed under *Article 49 (i) (h)* of the *Constitution*. The right is granted to all arrested and accused persons irrespective of the gravity of the

offence charged. It is however not absolute. It is subject to the existence of compelling reasons.

The duty to establish the existence of compelling reasons lies exclusively on the state. See: **Republic V Danson Mgunya & Another (2010) eKLR; Republic V Daniel Muasya Musyoka (2012) eKLR.**

7. The primary consideration in applications for bond pending trial is whether the accused if granted bond will attend to his trial if and when required or whether he is a flight risk. Other factors to be considered include whether he was likely to interfere with witnesses, his safety and the public interest.

8. In this case, the investigating officer's claim that the situation on the ground was hostile to the accused and that if granted bail his safety may not be guaranteed has been supported by the contents of the pre-bail report. The report indicates that as of 25th November, 2016, tension on the ground was high to an extent that the accused's home was burnt down and his other property destroyed by irate members of his community. His family was forced to relocate to Nandi County. And though it has been alleged that another place has been organized for him to reside in as he attends to his trial, no details have been disclosed regarding the identity of the person allegedly willing to accommodate the accused or where the place of proposed abode will be in relation to the area whose residents are hostile to the accused.

9. Life is sacred and the court cannot take the risk of granting the accused bond in circumstances which reveal a real possibility that his security and safety might be compromised if released on bond. It is not lost on me that the replying affidavit was sworn on 18th November, 2016 and the pre-bail report was compiled on 25th November, 2016 about three months ago. But since there is no evidence showing that the situation on the ground has now changed, I find that on the material placed before me, the prosecution's apprehension that if granted bond the accused's life might be in danger is well founded. This to me is a compelling reason to justify denial of bond to the accused person. I therefore reject the bond application for now but the accused is at liberty to renew the application when the security situation on the ground has improved.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 30th day of March, 2017

In the presence of:-

The accused

Mr. Oburu for the accused

Ms. Odour for the state

Mr. Lobolia court Clerk