



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL CASE. 58 OF 2017**

(formerly Eldoret HC Cr. Case NO. 80 of 2016)

**REPUBLIC**

**VERSUS**

**GILBERT KIPKORIR KOECH.....ACCUSED**

**RULING**

[1] This is a ruling on bail for the accused who has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The counsel for the applicant urges that there are no compelling reasons for denial of bail while the DPP relies on the Probation Officer's pre-bail report that the accused is unsuited for release on bail.

[2] The Probation Officer's pre-bail report dated 18<sup>th</sup> April 2017 concludes as follows:

**“CONCLUSION**

***Both families, deceased's and accused's are neighbours.***

***No family member from accused person's side has attempted to initiate any reconciliation due to fear of repercussion, as tension is still high concerning the incident. Family members of the deceased have expressed deep bitterness and feelings of profound loss and some claim they may not restrain themselves if they came face to face with accused as of now. They strongly oppose his release on bond. Majority of community members interviews have opposed his release as they fear for his safety.***

**RECOMMENDATION**

***The relatives of the deceased are opposed to his release on bail, as he conducts his case. They have expressed that their feelings of loss are still very fresh and the bitterness still raw. Family members of the accused person have not initiated any reconciliation as they fear to face the aggrieved family. Those interviewed including local administration and neighbours have indicated that his release on bond may not be conducive at this time and likelihood of retaliation is bond to occur which may result in loss of lives and probable destruction of accused person's family property.”***

[3] The Court is entitled on an application for bail to consider the volatility of situation on the ground and community concerns and possibility of revenge or retaliatory attack, which may warrant the accused being held in custody for his own protection, under section 123A (1) (b) and (2) (b) of the Criminal

Procedure Code, as follows:

**“123A. (1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—**

*(a) the nature or seriousness of the offence;*

**(b) the character, antecedents, associations and community ties of the accused person;**

*(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;*

*(d) the strength of the evidence of his having committed the offence;*

**(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—**

*(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;*

**(b) should be kept in custody for his own protection.**

*[Act No. 18 of 2014, Sch.]”*

[4] In Machakos HC Cr. Case No. 11 of 2016 **Republic v. Francis Kirima M’Ikunyua**, this Court considered the issue of situation on the ground and held as follows:

11. *“There is of course a public interest in the prosecution, conviction and punishment of offenders which must be balanced against the accused presumption of innocence and right to bail pending trial. For the balance to be tilted against the accused in the matter of bail, there must be evidence that the accused will or is highly likely to abscond, interfere with witnesses so that the prosecution is defeated or to interfere with on-going investigations while out on bail.*

12. **The other public interest consideration, which is not altogether unrelated to the interest in successful prosecution of criminal cases is that the accused should be detained for his protection [and to enable him stand trial] as set out in section 123A (2) (b) that the Accused “should be kept in custody for his own protection.”**

[5] In this case, Counsel for the accused has himself conceded that the situation on the ground is tense and the Court is not convinced as urged by counsel for the accused that the accused may be released on bond to stay at Eldoret away from home - and therefore any risks of harm to himself - as Eldoret is within the same region as his home and there has not been shown that any of the accused’s alleged relatives at Eldoret are willing to house him and stand surety for his attendance to court, and bail is accordingly denied. This is without prejudice to any subsequent application by the accused when the situation on the ground ameliorates.

**DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF APRIL 2017.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Chepng’oswo for the applicant

Ms. Kenei for DPP