



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE. 70 OF 2017

(formerly Nakuru HC Cr. Case NO. 5 of 2017)

REPUBLIC

VERSUS

PETER KIBE WAMUGI.....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 5th April 2017 concludes as follows:

"Your honour, before the honourable court is a 31 year old man who claims to have a young dependent family and an expectant house wife. However, he could not give the contacts of the wife and the exact place of their abode. He denies the charge and pleads with the court to grant him a chance to have his case heard when he is out on bond. He however, does not volunteer information to confirm the existence of his wife and he does not reveal a fixed abode leading to an impression that he is not being honest. He left home a long time ago for Nakuru and family members in Makutano do not know his place of abode in Nakuru. It is also obvious from the sentiments given that the family members who can stand surety are rather reluctant to assist him.

Recommendation

Your honour, in view of the negative sentiments from the deceased person's family, his lack of a fixed abode, failure to disclose contacts of alleged wife and the fact that family members contacted are reluctant to discuss [the] case and did not offer to stand surety for him, leaves doubt as to his suitability for bond terms."

[3] I am mindful of the caution by the Court of Appeal in *Kyalo v. R* (2009) KLR 325 that the Court should not solely rely on reports by probation officers which are not given on oath and have not been subject to cross-examination. However, the position that the accused is a flight risk because he has no fixed abode having left his home at Makutano for undisclosed place in Nakuru is not rebutted, and the Court must take it into consideration.

[4] The primary consideration for bail is whether the accused will attend his trial and if circumstances

exist indicating that the accused may jump bail, the court is entitled to decline bail. Under section 123A of the Criminal Procedure Code, the risk of flight is one of the considerations for the grant or refusal of bail, 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 fulfillment 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.]”

[5] In this case, the court does not feel confident that the accused will attend his trial if he is released on bail and therefore a compelling reason for denial of bail exists, and bail is accordingly denied. This is without prejudice to any subsequent application by the accused showing his place of abode and otherwise demonstrating security for his attending his trial while out on bail.

DATED AND DELIVERED THIS 20TH DAY OF APRIL 2017.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Terer for the applicant

Ms. Kenei for DPP