



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE NO. 13 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ISAACK KETER.....1ST ACCUSED

DAVID KETER.....2ND ACCUSED

ELPHAS KIPLIMO.....3RD ACCUSED

RULING NO. 2

1. On 26th May 2016, the Court *declined* the request by all the accused for bail pending trial. In a considered ruling, I observed as follows-

“The Victims Protection Act 2014 requires the views of victim’s family to be taken into account. From the social report, the deceased is a neighbour of the 2nd accused. The pre-bail reports on all the accused are favourable; but they are subject to the accused relocating from the locus in quo. The probation officer notes that the accused are not a flight-risk; and are unlikely to interfere with witnesses. However, the family of the deceased is very bitter. There is palpable anger in the village. The probation officer states that ‘one of the deceased’s son walks around with poisoned arrows, ready to attack the suspects’”.

2. A year has passed since then. All the accused have *renewed* their application for bond. Like I had observed, the original *pre-bail reports* were *favourable*. The new circumstances are two-pronged. First, the Republic *no longer* contests their release on bail. Secondly, there is a deposition sworn by Inspector Bayah on 4th May 2017. He deposes that the *“ground is no longer hostile”*. He opines that bail may be granted on condition that the accused relocate from Kamamut village. Learned counsel for the accused submitted that his clients will abide by all conditions for bond.

3. I must observe that the investigating officer has made a complete about turn. A short year ago, he vigorously contested bail; and, deposed that the accused were at grave risk of attack if they returned to the *locus in quo*. It is not for me to inquire deeper into the matter. Suffice to say that the State now concedes to bail.

4. The accused are charged with *murder*. However, they are deemed *innocent*. The sentence for murder is *death*. Under Article 49 (1) (h) of the Constitution, they are entitled to bail unless there be *compelling reasons*.

5. The overarching objective of bail is to ensure the accused *attend* their trial. *Muraguri v Republic* [1989] KLR 181. Relevant matters to be considered include the nature of the charge; the likely sentence; previous criminal records, the views of the family of the victim, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.

6. There being no compelling reasons for denial of bail, I will admit the accused to bail. However, the circumstances of the alleged offence demand stringent conditions to ensure the *safety* of the accused; that they do *not* interfere with *witnesses*; that they do not lose sight of the *gravity* of the *charge*; and, more importantly, that they *attend* their trial.

7. Each of the accused shall be released upon execution of a bond in the sum of *Kshs 2,000,000* together with *one* surety of a similar amount. The sureties shall be *examined* and approved by the Deputy Registrar of this Court. There are three *conditions* for bail. First, the accused shall *not* have any *direct or indirect* contact with the *nine* witnesses named on the reverse side of the *information* charging them with murder. Secondly, the accused shall, upon their release on bail, appear for mention *once every month* before the Deputy Registrar of the High Court until the conclusion of the trial or further orders of this Court. Thirdly, all the accused shall *relocate* from *Kamamut* village, the *locus in quo*, until the conclusion of the trial.

8. In default of *any* of the *three* conditions above, their bonds shall stand cancelled; and, the sureties shall be called to account.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 30th day of May 2017.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Accused.

Mr. Kenei for the accused.

Mr. Muchiri for the Republic.

Mr. J. Kemboi, Court Clerk.