



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 73 OF 2015

REPUBLIC PROSECUTOR

VERSUS

SAMUEL KIPCHUMBA MELIACCUSED

RULING

1. The accused *Samwel Kipchumba Meli* faces two counts in which he is charged with the offence of murder Contrary to *Section 203* as read with *Section 204* of the Penal Code.

In count 1, It is alleged that on the 6th day of December 2015 at Chepkongony Sub location in Nandi County, he murdered *Mercy Jerop* while in count 2, it is alleged that on the same date and place, he murdered Gladys's *Jeptoo*.

2. The accused denied both charges. He made an application to be admitted to bond pending trial on the date he took plea on 25th December 2015 but that application was withdrawn on 1st February 2016 after an unfavourable pre-bail report was filed against him. However, on 28th June 2017, his learned counsel *Mr. Oburu* made a fresh application for bond and an updated pre-bail report was filed on 17 July 2017.

3. On the strength of the fresh pre-bail report, the state through learned prosecuting counsel *Ms Kigegi* objected to the admission of the accused to bond pending trial on grounds that the environment on the ground had not changed since the initial application for bond was made; that despite the fact that the murder was committed on 6th December 2015, the community was still hostile towards the accused and releasing him on bond would compromise his safety.

4. In his response, *Mr. Oburu* submitted that the murder took place a long time ago and the wounds of the victims of the offence should have healed by now; that the accused is a young man and he should be given an opportunity to reconstruct his life; that there are no compelling reasons to justify denial of bond. He urged the court to allow the application.

5. I have considered the application and the rival submissions made by the parties. The Constitution of Kenya 2010 at *Article 49 (1)(h)* guarantees any accused person irrespective of the seriousness of the offence charged the right to bond pending trial subject only to the existence of compelling reasons.

6. Where the state opposes the grant of bond pending trial, it has the onus of proving that compelling reasons exists in that particular case to justify denial of bond. And in deciding whether or not to grant bond pending trial, the court considers several factors chief among which is whether the accused person is a flight risk; whether there is a risk that if released, the accused will interfere with prosecution witnesses; his safety; his personal circumstances; the public interest among others.

7. In this case, the state has relied on the pre-bail report filed on 18th July 2017 to oppose the accused's application for bond. I have read the said report. Its import in the main is that the release of the accused on bond at this time was likely to disturb public order and that his safety would be at risk.

8. I have perused the court record. I note that the murders subject of the trial were allegedly committed on 6th December 2015 about one and a half years ago. It is my view that sufficient time has passed to enable the victims' family come to terms with the demise of their loved ones and any hostility harboured against the accused as the person suspected to have committed the offence should have subsided by now.

9. In any event, the alleged hostility is no doubt based on the assumption that the accused is guilty of the offences charged which is misplaced in law as an accused person is presumed innocent until proved guilty. If the alleged hostility has subsisted for over a year, there is no guarantee that it will end any time soon.

10. In the circumstances, it would be unjust and unconstitutional to deny an accused person bail indefinitely on the grounds advanced in the prebail report because it would be tantamount to denying an accused person the right to enjoy his constitutional right to bond for reasons akin to presuming that he is guilty before he is proved guilty. The victims' family is reminded that it is only this court which can, after hearing evidence establish the guilt or otherwise of the accused person. They should therefore patiently wait for the course of justice to flow to its logical conclusion. In my opinion, the victims' families alleged bitterness or hostility towards the accused is not a good reason to deny him the exercise of his constitutional right to bond pending trial.

11. In view of the foregoing, it is my finding that the state has not demonstrated any compelling reason to warrant denial of bond to the accused. The application is accordingly allowed on the following terms;

The accused shall be released upon executing a personal bond of Ksh 500,000 together with one surety of a similar amount.

The surety shall be approved by the Deputy Registrar of this court. Once released, the accused shall attend mentions before the Deputy Registrar once every three months during the pendency of the trial or until other orders are issued by this court.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 27th of July, 2017

In the presence of:-

Accused

Mr. Obuor for the accused

Ms.Kaingia for the state

Mr. Lobolia court clerk