



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 4 OF 2016**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**FESTUS KIPTANUI .....1ST ACCUSED**

**KENNEDY KIPKERING ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two accused persons *Festus Kiptarus* and *Kennedy Kipkering* face a charge of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars allege that on 24<sup>th</sup> July, 2015 at Elsero village in Kabisaga location within Nandi County, jointly with others not before the court, the accused persons murdered *Elvis Kiplagat*. They both denied the charges.
2. On 25<sup>th</sup> January, 2016, learned counsel *Mr. Sagasi* made an oral application praying that the accused persons be admitted to bond pending trial. He argued that the accused persons presented themselves to the police when they were arrested and that they are entitled to bail pending trial.
3. The application is opposed by the state. In contesting the application, learned prosecuting counsel *Ms Moku* relied entirely on pre-bail reports filed in court by the probation service on 15<sup>th</sup> February 2016 in compliance with court's directions issued on 25<sup>th</sup> January, 2016. She submitted that the accused persons and the deceased come from the same village; that the deceased's family members are still bitter and there is tension between them and the accused persons family; that the said tension might escalate into violence against the accused persons if they are admitted to bail at this point in time and that for their own safety, the application should be rejected.
4. In rejoinder, *Mr. Sagasi* submitted that no good reason exists to justify denial of bond pending trial in this case as the accused persons continued to live in the same village for about six months after the offence was committed and if their safety was not compromised for that period of time, there was no reason to fear that if admitted to bond now, they will be exposed to any danger. Counsel also claimed that the accused persons will relocate to another place if their application was allowed.
5. I have carefully considered the application, the rival submissions made by the parties and the pre-bail reports compiled in respect of each of the accused persons. Under **Article 49 (1) (h)** of the Constitution, an accused person charged with any criminal offence is entitled to bond or bail pending trial subject to existence of compelling reasons. The constitution does not define what amounts to compelling reasons to warrant denial of bond. This is left to the trial court to determine after evaluating the circumstances prevailing in each case.
6. The duty to prove the existence of compelling reasons falls squarely on the prosecution – See **Republic V Daniel Muasya Musyoka [2012] R KLR.**

In this case, the only reason advanced by the state for its opposition to the application is that the accused persons come from the same village as the deceased; that members of the deceased's family are still bitter with the accused persons as they are suspected to have taken part in the death of the deceased and that if they are granted bond now, their safety may be endangered.

7. It is important to state at this juncture that it is the accused persons Constitutional right to be presumed innocent until they are proved guilty. They are therefore entitled to enjoy their liberty pending their trial if the state does not demonstrate to the satisfaction of the court that there are compelling reasons which justifies curtailment of their right to bond.
8. The veracity of the state's claim that the safety of the accused persons might be compromised if they are granted bond given the bitterness expressed towards them by members of the deceased's family has been completely diluted by the defence's claim that the accused persons continued to live in the same village for about six months after the offence was committed with no threat to their lives. This claim has not been disputed by the state. This claim seems to find support in the information containing the charges preferred against the accused persons. The charges allege that the offence was committed on 24<sup>th</sup> July, 2015 and the information is dated 13<sup>th</sup> January, 2016 about six months later.
9. Even if, for the sake of argument the claim by *Mr. Sagasi* is not true, it is my view that bitterness expressed by members of the deceased's family by itself is not a compelling reason to justify denial of bond to an accused person. The deceased's family members are expected to be law abiding citizens who should allow the legal process to be carried out to its logical conclusion in order to determine the guilt or innocence of the accused persons as charged. It is only the court which can determine whether or not the accused persons had anything to do with the death of the deceased.
10. For the foregoing reasons, I find no good reason to deny the accused persons their constitutional right to bond pending trial. I therefore allow the application. I admit each accused person to bond on the following terms;

Each accused will be released upon executing a bond of Kshs. 500,000

together with one surety of a similar amount. The surety will be approved by the Deputy Registrar of this court. Once released, each accused will attend mentions before the Deputy Registrar once every two months during the pendency of the trial.

It is so ordered.

**C.W GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 25<sup>th</sup> day of February 2016.**

In the presence of:-

Both Accused Persons

Ms. Oduor for the state

Mr. Sang Counsel for both accused

Naomi Chonde – Court Assisstant