



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 42 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ELIAS CHEPKIENG KIPKEMOI.....ACCUSED

RULING (NO. 2)

1. The accused has renewed his application to be admitted to bail pending trial. On 14th July 2014, the Court declined to release the accused on bail for the following reasons-

“The accused is charged for the unlawful killing of Timothy Kipkemoi. It is not contested that the deceased was his son. The witnesses are close family members. The accused would be going back to live with them. I find that there is a real likelihood of interference with witnesses. That to me is a compelling reason not to release the accused on bail at this stage. That stated I would direct the accused to renew the application once those witnesses have testified.....”

2. On 16th September 2014, the accused filed a notice of motion praying to be released on bail. The witnesses the Court referred to had not testified. The motion was thus premature and ran counter to the express directions of the Court. At paragraph 6 of the affidavit supporting the motion, the accused deposes that “*nobody witnessed the death of the deceased which [sic] is my son except me*”. His learned counsel submitted that from the statements in the committal bundle, the witnesses the Court referred to may not be material. The accused averred that in the circumstances, there are no compelling reasons to deny him bail. He also averred that he is willing to abide by any conditions set by the Court. He deposes that in view of his advanced age, he has no reason to abscond. On 12th June 2014, his learned Counsel had informed the Court that the accused is diabetic.
3. The state opposes the application. The learned State Counsel submitted that the motion is an abuse of court process in view of the ruling of Court of 14th July 2014. Learned State Counsel submitted that the application for bail should be made only *after* close of the testimony of the family members.
4. Although the accused faces a grave charge of murder, he is still deemed to be innocent until proved guilty. He is also entitled to equal protection of the law. Under Article 49 (1)(h) of the Constitution, he is entitled to release on bail *unless* there be compelling reasons. See *Republic v Daniel Musyoka Muasya and others*, Mombasa, High Court Criminal Case 42 of 2009 [2010] eKLR, *Republic v Danson Mguya and another*, Mombasa, High Court Criminal Case 26 of 2008 [2010] eKLR.

5. The key consideration in an application for bail is whether the accused will attend his trial. See Watoro v Republic [1991] KLR 220. To reach the decision, the Court must consider the nature and gravity of the charge; the possible sentence; the likelihood to interfere with witnesses; or, the possibility that the accused may abscond.
6. A number of those parameters have changed in this case. On 23rd January 2015 when this motion was argued, the main trial of the accused commenced in earnest. Three key witnesses related to the accused concluded their testimony. The learned State Counsel confirmed that the remaining four witnesses comprise of the area Chief, two police officers and the pathologist. Granted those circumstances and the directions of the Court of 14th July 2014, there are no longer compelling reasons for denial of bail. But considering the *nature* and *gravity* of the offence, the Court must set reasonable conditions to ensure the accused attends his trial.
7. The upshot is that the application for admission to bail is allowed. The accused shall be released upon execution of a bond in the sum of Kshs 1,000,000 together with two sureties of a similar amount. The sureties shall be approved by the Deputy Registrar of this Court. As a *further condition*, the accused shall, upon his release, report *once every month* to the investigating officer of this case until the conclusion of the trial or further orders of this Court. In default of the latter condition, the bond shall stand cancelled and the two sureties called to account.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 26th day of January 2015.

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open Court in the presence of:-

Accused.

Mr. J. W. Mulati for the State

Mr. J. Kemboi, Court Clerk