



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 70 OF 2014

REPUBLICPROSECUTOR

=VERSUS=

LEONARD KIPLIMO KIPLAGAT ACCUSED

RULING

The accused person herein **Leonard Kiplimo Kiplagat** has applied to be admitted to bond/bail pending his trial.

The application was made orally in court on his behalf by Learned Counsel **Mr. Nyandoro** on 19th November, 2014.

The application is opposed by the state. Learned prosecuting counsel **Mr. Mulati** in his opposition to the application relied on a replying affidavit sworn on 10th December, 2014 by the investigating officer in this case one **Chief Inspector Edward Mungatsia**.

Having heard **Mr. Mulati's** submissions and read depositions in the Replying affidavit, it is clear that the state's opposition to the accused's application is grounded on the claim that the safety and security of the accused and that of his family would be at stake if the accused was to be admitted to bond at this stage as according to the investigating officer, members of the deceased's family and their community at large are currently hostile to the accused and his family.

To get more information on the security situation on the ground, upon application by **Mr. Miyienda** on 4th February, 2015 this court called for the filing of a pre-bail report.

I have now read the pre-bail report filed in this court on 13th February, 2015. The report confirms that the deceased's family is bitter and hostile towards the accused and his family to an extent that the accused's family members have been forced to relocate from their home and now live with their maternal relatives. The report also discloses that the deceased was an uncle and neighbour to the accused and that witnesses in this case are relatives; that if released on bond the accused is likely to interfere with those witnesses.

Needless to say, bond/bail is a constitutional right but that right can be denied if compelling reasons exist to justify its denial. In this case, the pre-bail report has vindicated the investigating officer's depositions in the Replying affidavit that the environment on the ground is hostile and that if the accused is admitted to bail at this stage, his safety and security would be at risk.

This in my view constitutes a compelling reason to warrant denial of the accused person's right to bond for now since the accused needs to be alive and healthy in order for him to stand trial. Put differently, the

safety of an accused person is an important consideration that the court must take into account when deciding whether or not to grant bond pending trial in a particular case.

I am alive to the fact that it is the state's duty and obligation to ensure the safety and security of all its citizens; that it can also be argued that even in the face of the verified claims that the accused's life may be in danger if admitted to bond, the court should admit the accused to bond and leave it to the state to accord him security.

But it is common knowledge and this court takes judicial notice that sometimes for various reasons the state is not able to fully discharge its obligation to secure the safety and security of all its citizens at all times.

It would therefore be imprudent for this court to take the risk of compromising the life or safety of an accused person by admitting him to bond pending trial when it is clear that his home environment is not conducive for his safety.

In view of the foregoing, I decline to allow the application for now but the accused is at liberty to renew the application once the security situation on the ground improves.

Orders accordingly.

C. W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT ELDORET THIS 18TH DAY OF FEBRUARY 2015

In the presence of:-

Accused person

Mr. Mwaniki for the state

Mr. Nyandoro for the accused