



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 4 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LABAN KIPTARBEI MISOI.....ACCUSED**

**RULING**

1. The accused prays to be admitted to bail pending trial. The prayer is contained in a notice of motion dated 17<sup>th</sup> February 2015. In a deposition sworn on even date, the applicant avers that he has been in custody for one year; that he had surrendered himself to the police; that he never went into hiding; that he is not suicidal; that he will not interfere with witnesses; that investigations into the alleged offence are complete; and, that his family will stand surety for him. There is a further affidavit by the same deponent sworn on 20<sup>th</sup> February 2015.
2. The State opposes the application. There is a replying affidavit sworn by *Fedicks Aluoch*, the investigating officer. The learned State Counsel, *Ms. Karanja*, referred to paragraphs 6 and 7 of the deposition. The investigating officer deposes that the accused was the husband to the deceased; that a key witness in the case is a son of the accused; and, that there is a real likelihood of interference with witnesses. Learned State Counsel submitted that there are thus compelling reasons for denial of bail.
3. The accused has countered those matters in the further affidavit I referred to. He claims his home is in Kapcheluch, Kosirai Location, Nandi Central Sub-County while the deceased hailed from Nandi East Sub-County; he says the two are miles apart. He avers he has never married and has no child with the deceased. He denies being related to any potential witness(es). His learned Counsel, *Mr. Kenei*, submitted that that the accused undertakes to attend his trial and to abide by any conditions of his bond; that he is unlikely to abscond; that he has a fixed abode; and, that he will not interfere with the investigations or the witnesses. His learned counsel emphasized that bail is a constitutional right.
4. I have considered the rival submissions. The accused faces a grave charge of murder; but he is still deemed to be *innocent* until proved guilty. The sentence for murder is death. The accused is entitled to protection of the law and a right to release on bail. Under Article 49 (1)(h) of the Constitution, he is entitled to such release 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 Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported), *Republic v John Mwenya Chumbe*, Eldoret, High Court Criminal Case 47 of 2014 (unreported), *Republic v Evans Kiprono Yegon*, Kericho, High Court Criminal Case 38 & 40 of 2014 [2015] eKLR, *Republic v Prosper Mutua Nzilani*, Nairobi, High Court Criminal Case 15 of

2013 [2014] eKLR, *Republic v Caleb Oluoch Were & 2 others*, Eldoret High Court Criminal Case 36 of 2008 [2011] eKLR, *Republic v Ali Mcheni Ali* Mombasa High Court Criminal Case 7 of 2011 [2011] eKLR.

5. The overriding purpose of bail is to ensure the accused attends his trial. But in making the decision, the Court must consider the nature of the charge; the likely sentence; previous criminal records, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused upon release.
6. The accused is charged for the unlawful killing of *Christine Jebet*. The case for the State is that the deceased was the *wife* to the accused; that their *son* is a material witness; and, that there is likelihood of interference with the witnesses. The rejoinder by the accused is that he never married the deceased; and, that the allegations he has a son are ludicrous. He submitted that the replying affidavit by the investigating officer is speculative. It is not possible at this stage to make a conclusive finding on those contested matters. I have before me two diametrically opposite averments. One of the sides is obviously *lying* or not entirely candid. I cannot prejudge the murder trial. I cannot shut my eyes completely to the allegation that the deceased had relations with the accused or that the prosecution witnesses are related to the accused. Bail is however at the discretion of the trial court. The State submitted that the witnesses are close family members of the accused. The riposte by the accused is that he has no such relatives. The accused says he hails from a different sub-county from that of the deceased. That is not a guarantee that he would not reach such witnesses. The accused still faces a grave charge of murder. But I will give him the benefit of *doubt* and exercise my *discretion* in his favour.
7. I am minded in the circumstances to grant bail but under strict *conditions* to ensure that the accused *attends* to his trial; and, that he does not *interfere* with witnesses or evidence. 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 *examined* and approved by the Deputy Registrar of this Court. As a *condition* for bail, the accused shall not interfere with evidence or have any direct or indirect contact with any witness in this case. In particular, he shall *not* have any direct or indirect contact with the witness named at paragraph 6 of the deposition of the investigating officer. 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.
8. In default of any of the *three* conditions above, the bond shall stand cancelled and the two sureties called to account.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **ELDORET** this 19<sup>th</sup> day of March 2015.

**GEORGE KANYI KIMONDO**

**JUDGE**

**Ruling read at in open Court in the presence of:-**

Accused.

Mr. Wamalwa for Mr. Kenei for the accused.

Ms. Karanja for the State.

Mr. Kemboi, Court clerk.