



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 44 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KIPKORIR TERER.....ACCUSED

RULING

1. The accused prays to be admitted to bail pending trial. On 29th June 2015 his learned Counsel, *Mr. Richard Kamau*, made a brief oral application for bond. The learned State Counsel prayed for time to reply.

2. On 28th July 2015, the State formally opposed the application. The State relied on the replying affidavit of *Mbatian Kantai*, a Chief Inspector of Police investigating the matter. The deposition is sworn on 17th July 2014. It is deposed that owing to the cruel manner in which the deceased was killed, the public was incensed. The investigating officer concluded that the safety of the accused would thus not be assured. At paragraph 5 of the deposition, he deposes that the key eye witness is the wife of the accused. The other witnesses are close relatives. It was submitted that releasing the accused would compromise the safety of witnesses or interfere with evidence.

3. The accused has filed a replying affidavit sworn on 28th July 2015. He avers that he is married to two wives; and, that only one of them would be a witness. He is unaware of any other relative lined up as a witness. He pleads his innocence. He avers that there is no evidence of potential revenge against him. He offered to relocate to the home of his other spouse. He undertook to keep the peace and to abide by any conditions set by the court. In a synopsis, the accused submitted that there are no compelling grounds for denial of bail. To buttress those arguments, his learned counsel referred me to four precedents in a list of authorities filed on 28th July 2015. Counsel submitted further that the replying affidavit by the investigating officer was based on conjecture and unsubstantiated allegations. He emphasized that bail is a constitutional right.

4. I have considered the application, depositions, the authorities and 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 may be released *unless* there are 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 overarching purpose of bail is to ensure the accused attends his trial. But in making the decision, the Court must consider, among other factors, the nature of the charge; the likely sentence; possibility of interference with witnesses; the chances of the accused absconding; and, his own safety upon release.

6. The accused is charged for the unlawful killing of *Wilson Kirwa* on 5th June 2015 at *Mbogo Valley Sublocation within Nandi County*. The investigating officer states there *might* be acts of revenge against the accused. That averment is not supported by cogent evidence. However, the accused concedes that one of the witnesses in this matter is his wife. Although the accused states that he can relocate and live with his second wife, the likelihood of interference with the evidence of a spouse is real and looms large. The investigating officer has deposed that one of the wives is an *eye witness*. Granted the nature and gravity of the offence, I am satisfied that there is a *high likelihood* of interference with a potential witness or witnesses or the integrity of their evidence. That is a compelling reason for denial of bail.

7. The upshot is that the application by the accused to be admitted to bail is refused. The accused will however be at liberty to renew the application once the spouse or other close relatives conclude their testimony.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 24th day of September 2015.

GEORGE KANYI KIMONDO

JUDGE

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

Accused.

Mr.....for the accused.

Ms.....for the State.

Mr. J. Kemboi, Court clerk.