



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL CASE NO. 59 OF 2015**

**REPUBLIC ..... RESPONDENT**

**VERSUS**

**GILBERT KIPKOECH KIBET .....  
 RESPONDENT**

**RULING**

1. The accused *Gilbert Kipkoech Kibet* faces a charge of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence allege that on the 24<sup>th</sup> day of September 2015 at Chebisas village in Elgeyo Marakwet County, he murdered *Edna Chebet*.
2. On 7<sup>th</sup> October, 2015, the accused took his plea and denied the charges. On the same date, an application seeking the he be admitted to bond pending trial was made orally in court on his behalf by learned counsel *Mr. Kibii* who held brief for learned counsel *Mr. Lagat*, the accused’s advocate on record.
3. The application is contested by the state. Learned prosecuting counsel *Ms Karanja* in opposing the application relied entirely on a replying affidavit sworn by the investigating officer *CPL Gerald Kamandu*. In the said affidavit, the investigating officer has deposed that the prosecution’s key witness is the accused’s mother and that if he is admitted to bail at this stage, he is likely to interfere with the witness.
4. In rejoinder, the accused person swore an affidavit titled “Replying Affidavit” on 17<sup>th</sup> November, 2015 in which he deposed that if granted bond as prayed, he will not interfere with all the prosecution witnesses and that he will abide by any terms the court may impose. He denied the allegation that he is likely to interfere with his mother’s testimony claiming that this was not possible as he does not live with his mother.
5. Learned counsel *Mr. Lagat* on his part submitted that the prosecution’s claim that the accused if granted bail will interfere with their key witness was based on mere apprehension. It was his view that the state had not established a compelling reason to warrant the court to deny the accused the exercise of his constitutional right to bond pending trial.
6. I have considered the accused’s application, the affidavits filed by both parties and the rival submissions made on behalf of the accused and the state. It is not disputed that bond pending trial is a constitutional right available to all arrested or accused persons subject only to existence of compelling reasons – See: **Article 49 (1) (h)** of the **constitution**.

The constitution does not however define what amounts to a compelling reason to justify denial of the

right to bond or bail pending trial. It leaves it to the discretion of the court to determine what constitutes a compelling reason depending on the circumstances of each case.

7. In this case, the state has opposed the accused's application on grounds that it is apprehensive that if the accused is released on bond at this point in time, he is likely to interfere with its key witness who turns out to be the accused's biological mother. The accused in his affidavit has not denied that his mother is actually a prosecution witness in this case. He has only denied that if granted bond he was likely to interfere with her evidence allegedly because he lives far away from her. It is however significant to note that the accused did not disclose where he lived to back up his claim that he did not live with his mother. But even if he did, it is my view that this would not have been material because the issue here is not whether or not he lived with his mother but the close relationship that existed between him and his mother which would make her susceptible to manipulation by the accused if he is out on bond.

8. The possibility of interference with witnesses before their evidence is secured by the court is a matter which the court cannot lightly. It is a serious matter which goes to the root of the administration of justice particularly the criminal justice system.

9. In this case, given the close relationship between the accused and the prosecution's main witness, I am satisfied that the state's apprehension that if granted bond pending trial at this stage the accused is likely to interfere with its key witness is well founded. I am thus of the view that the state has demonstrated that a compelling reason exists at this stage of the proceedings to justify the denial of the accused person's constitutional right to bond or bail pending trial.

I consequently decline to grant the accused bond pending trial for now but advice that the application may be revisited after his mother testifies.

It is so ordered.

**C.W GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 22<sup>nd</sup> day of December, 2015.**

In the presence of:-

Mr. Lagat for the accused

Mr. Mulati for the Republic

Mr. Emmanuel Lobolia – Court clerk