



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NO. 14 OF 2015

REPUBLIC PROSECUTOR

V E R S U S

NIMO IBRAHIM MOHAMUD ACCUSED/APPLICANT

RULING

Before me is an application brought by way of Notice of Motion dated 23rd October 2015 for bail pending trial. The application was filed under Article 49(1)(h) of Constitution of Kenya 2010. The prayer is only one, which states as follows:-

“This honourable court be pleased to release the applicant on surety bond or cash bail or mixture of surety bond and reasonable cash bail pending the hearing and final determination of this case on such reasonable conditions as the court may determine”.

The application was filed with a Supporting Affidavit sworn by the applicant on 23rd October 2015. In the affidavit, it was deponed that the applicant was a female adult married to Ahmed Hussein Omar and that they had three children aged 14, 7 and 5 years. It was also deponed that they had divorced in 2009 and that in 2013, she received information that the husband had died. She stated that she was a tailor at Ijara and lived close to her brother Ismael Ibrahim Mohamud of Telephone. No. 0723248396. She had deponed also that she had not been involved in any quarrel, fight or violence with anybody. She denied having killed the deceased and denied ever meeting the deceased. She stated that she was not a flight risk and that she should be released on bail.

During the hearing of the application, learned Counsel for the applicant Mr. Onono, urged that the applicant be released on bail pending trial. Learned Prosecuting Counsel Mr. Okemwa submitted that he had contacted the Investigating Officer, and that the prosecution did not oppose the application for bail. They were merely asking for adequate or sufficient conditions for a grant of bail.

In response, Mr. Onono submitted that the matter was urgent. Counsel relied on the facts in the application and did not wish to add anything more.

This is an application for bail pending trial. The applicant stands charged with the offence of murder. Under Article 49 of the Constitution of Kenya 2010, every person who is in custody,

irrespective of the offence alleged against him or her, is entitled to be released on bail or bond on reasonable conditions unless there are compelling reasons not to do so. The relevant part of the Article states as follows:-

“49(1) an arrested person has the right -

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released.”

Courts have held that the burden is on the prosecution to demonstrate the compelling reasons to deny the accused or arrested person a right to bail of bond. In the present matter the prosecution has not opposed the grant of bail.

The main consideration by the court in an application for bail pending trial, is whether the accused will be able to attend court for the trial. In case there is present any reason to convince the court whether raised by any of the parties, or on its own information, the proper course would be for the court to disallow the bail application. It is right that accused persons should attend the criminal proceedings, until they are discharged or acquitted by this court.

Having said so, the prosecution herein does not object to bail pending trial. The court has no information which is adverse regarding the conduct of the accused person. She has given information that she comes from Ijara within Garissa County. She has disclosed the name and telephone number of a brother who lives near her. In my view the applicant is not a flight risk. I will therefore grant her bail or bond pending trial.

None of the counsels for the prosecution or the defence have addressed me on what would constitute reasonable conditions for granting a bail. The conditions to be imposed by the court are discretionary and depend on the nature and circumstances of the case. It is thus incumbent upon the court to determine the most suitable conditions for grant of bail or bond. In the circumstances of this particular matter I will release the applicant on bail/bond on the following conditions:-

1. The applicant will be released on signing a bond of Kshs 800,000/= with one surety of similar amount or by paying a cash bail of Kshs 600,000/=.
2. She will attend court during all mentions of the case and the hearing thereof.
3. She will not interfere with prosecution witnesses.

Dated and delivered at Garissa this 9th December 2015.

GEORGE DULU

JUDGE