



REPUBLIC OF KENYA

High Court at Kericho

Criminal Case 13 of 2012

SOLOMON KIPNGETICH KIMETTO.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 18th February 2013. The application is brought under Certificate of Urgency and is expressed to be brought under Article 49(h) of the Constitution of Kenya, the Criminal Procedure Act cap 75 of the Laws of Kenya and other enabling provisions of the law.
2. Through the application, the Applicant Solomon Kipnetich Kimetto seeks admission to bail to bond/bail pending the hearing and determination of the criminal case herein.
3. The Applicant's case is that he is a suspect and ought to be given bond, to which he claims to be entitled under the Constitution of Kenya, 2010. The Applicant contends further that he is a citizen of Kenya with a known place of residence and that it would be in the interest of justice that the application for bail is allowed by this court. The Applicant confirms that he is ready to abide by the terms and conditions of bail as may be imposed by the court.
4. At the hearing of the application, learned counsel for the Applicant Mr. C.K. Korir submitted that he was entirely relying on the grounds set out in the application as well as the affidavit in support. On his part, learned counsel for the Respondent Mr. Rogoncho told the court that the State was not opposed to the application.
5. I have considered the application. I make the following view of the same.
6. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code cap 63 of the Laws of Kenya. The particulars of the offence are that on 27th February 2012 at about 10 p.m. in Kiboybei Village Kenegut location in Kericho District within the Rift Valley he murdered Irene Chepkurui Kimeto.
7. The offence of murder attracts death penalty if the accused person is convicted. Prior to the promulgation of the Constitution of Kenya, 2010, the offence was not bailable. However, Article 49(1)(h) of the Constitution now provides that an arrested person has the right to be released on bond or bail or reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
8. In the present matter, the prosecution indicated that it was not opposed to the application for bail. I take it that this concession discharges the burden bestowed upon the prosecution of proving whether or

not there are any compelling reasons as to why the accused should not be admitted to bail. That burden is discharged in favour of the accused person. This leaves it to this court to merely set reasonable bail terms.

9. This court is enjoined to create a balance that ensures that attendance of an accused person in court is secured while at the same time safeguarding the constitutional right of the applicant to bail through imposition of reasonable bail terms.

10. In the event, given the severity of the sentence the appellant is serving, and in keeping the bail terms reasonable, I am inclined to grant bond to the appellant of Kshs. 500,000/- with one surety of a similar sum.

11. It is so ordered.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20th DAY FEBRUARY 2013.

**J.M. MUTAVA
JUDGE**