



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 72 OF 2012**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**DICKSON MUKASA SIMIYU ..... ACCUSED**

**RULING**

Before me for determination is Notice of Motion dated 16/12/2012 in which the Applicant, who I the accused prays that he be released on bond/bail on reasonable conditions. The same is based on grounds that:-

- 1. The Applicant has been charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.**
- 2. Though under the Criminal Procedure Code the applicant cannot be released on bail/bond, under the Constitution of Kenya 2010 which is the supreme law all accused persons are entitled to be released on bail pending the trial unless there are compelling reasons not to be released.**
- 3. The Applicant maintains his innocence and this innocence is guaranteed by Article 50 (2) (a) of the Constitution of Kenya 2010.**
- 4. The state dropped charges against the applicant's wife Anne Ajiambo and opted to pursue the Applicant alone.**

It is further supported by the affidavit of the Applicant sworn on 10th December, 2012. The gist of the supporting affidavit is that the Applicant is willing to abide with any conditions set by the court and that he undertakes not to interfere with any prosecution witnesses.

The State has opposed the application vide a Replying Affidavit sworn by number 69598 police officer attached to Kesses Police Post under Kiambaa Police Station. He depones that if the Applicant is released on bail/bond, he is likely to interfere with witnesses. In particular he depones that, the Applicant is alleged to have murdered a daughter of one Ann Ajiambo, the latter being his wife. He states that at the time the Applicant married Anne Ajiambo, she had already given birth to the deceased, that Anne Ajiambo is one of the prosecution witnesses who may not come to court to testify if the Applicant is released on bond.

Before the State could reply to the application, court called for a pre-bail report. The same was filed in court on 19/3/2013. It is signed by one Beatrice Kiptogoch a Probation Officer and is dated the 19th March, 2013.

The said report indicates that, since the alleged murder, the mother of the deceased one, (here named Ann Adhiambo) has since separated with the Applicant. In conflicting him of event, the same report indicates that the Applicant's family members including his wife Ann Adhiambo are willing to receive him back home and offer him emotional and psychological support. This statements begs more questions than answers in the sense that, it is not clear how the separated wife will offer the Applicant the emotional and psychological support. The pointer is that there is an undoubted likelihood of the two (Applicant and Ann Adhiambo) reuniting upon granting of bail to the Applicant.

Such a scenario would complicate the likelihood of the said Ann Adhiambo (Ajambo) conceding to testify against her husband.

I note from paragraph five (5) of the Replying Affidavit that the Respondent referred to a statement of the Applicant's wife which it failed to attach. I have no doubt though, that the Applicant's wife recorded a statement and she therefore remains a crucial prosecution witness. He evidence would be no doubt compromised if the Applicant is released on bail to continue cohabiting with her.

Under Article 49 (1) (h) of the Constitution an accused person is entitled to bail unless there are compelling reasons to warrant court not to grant him bail.

Although there are no standard principle set to define what the compelling reasons are, I would consider the likelihood of interference with witnesses as one cardinal factor to be considered.

In this respect, I find that, from the foregoing, there is a likelihood of the Applicant interfering with a crucial prosecution witness if he is released on bond.

Accordingly, I decline to grant him bail/bond until such a time that circumstances may change. Accordingly, I dismiss the application.

**DATED and DELIVERED at ELDORET this 26th day of June, 2013.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

**In the presence of:**

Ngigi holding brief for C. F. Otieno for the Accused

Wainaina for the State