



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 40 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

LAMPAT LETONGOROS.....1ST ACCUSED

LEORLE LETONGOROS.....2ND ACCUSED

BENSON LEPERE.....3RD ACCUSED

RULING

Lampat Letongoros, Leorle Letongoros and Benson Lepere face a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The murder is alleged to have taken place on 16/4/2013 at Ledala Village in Samburu County. They denied the offence Mr. Wambeyi, Counsel for the accused filed the Notice of Motion dated 25/5/2013 seeking an order that the three accused be released on bond pending the hearing and determination of this case.

The grounds upon which the application is brought are found in the body of the application and the affidavit of Kimani Letongoros Liarpot, who claims to be a younger brother of the applicants. It is contended that the applicants have been incarcerated since 18/4/2013; that their right to bond is guaranteed under **Article 49(1)(h)** of the **Constitution**; that their continued detention will dilute the presumption of innocence until proven guilty; that their right to liberty is inalienable and indefeasible and should not be unless for good reason. It was deponed that the applicants have a permanent place of abode at Baawa Location, Maundumere sub Location in Naunere village, where they have permanent homesteads and families; that their families depend on them for upkeep and their chief is Lelikumani; that they are willing to provide security for the applicants appearance in court as the court may require them and that they will not interfere with any witnesses. Counsel relied on Cr. 82/2012, **Rep. v Lawrence Sabastian Lorunyeri and 6 Others**, 82/2012 in which this court granted bond to the applicants.

The application was opposed and PC Geoffrey Mathenge of Maralal Police Station, the Investigation Officer in this matter, deponed that he was conversant with the facts on this case. The grounds upon which he opposes the application are that if released, the applicants are likely to be harmed by the community since there is still hostility and tension; that the applicants are next door neighbours to the deceased; that they are likely to interfere with witnesses if released because they have already threatened witnesses through phone calls while in prisons; that since they come from a pastoralist community, they are likely to jump bai; that the 1st applicant was a Kenya Police Reservist who had a gun but was dismissed because of his bad behaviour. The Investigation Officer annexed the minutes of a meeting held on 2/4/2011 (GM1). He urged taht it will not be proper to release the accused on bond.

Mr. Chirchir, counsel for the State added that the witnesses who were threatened were in court on that day and asked the court if it wanted to hear them but the court did not accede to that invitation.

I have considered the arguments by both the applicants and the prosecution side. It is not in dispute that bail is a **Constitutional** right of an accused and the decision whether or not to grant bail to an accused is in the discretion of the court which has to be exercised judicially meaning it has to be based on sound judgment and good sense and on grounds.

The cardinal point in granting bail to an accused is to set such conditions as will ensure that the accused will appear later at the trial or other proceedings during his trial.

In the instant case the prosecution objected to the bond for reasons that the accused persons were already threatening witnesses using mobile phones while in remand. On the day this application was heard, the State Counsel urged that infact, that witnesses were in court but the court did not allow the witnesses to be put in the witness box because the proper way to approach it would have been by the witnesses swearing affidavits which they had not done. It was deponed that the accused and the family of the deceased are neighbours back home. The court cannot just wish away such a serious allegation of interference and threats.

On the allegation that the situation on the ground is still hostile, the offence was committed in April this year. It is about 4 months since. I believe the emotions must have cooled down considering that time is a healer.

The Investigation Officer attached a copy of minutes of a meeting held in Ledala Village on 2/4/2011 in which several accusations are leveled against the 1st applicant, Lampat Letorongos on his involvement in crime and unbecoming conduct. That annexure represents the concerns of the community from which the applicants hail. One of the conditions in granting bond is that a person if released on bond will not engage in criminal acts. These allegations cannot be ignored, because if released it is the community that is ultimately affected.

For the reasons considered above, I decline to grant bond to any of the accused at this stage but direct that after hearing some of the key witnesses, when the matter comes up for hearing, then I will revisit the issue of bond.

These shall be orders accordingly.

DATED and DELIVERED this 28th day of August, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Maragia holding brief for Mr. Wambeyi for the accused

Mr. Marete for the State

Mr. Mwangi - Court ClerkAA