



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 78 of 2012

REPUBLIC.....PROSECUTOR

VERSUS

COLLINS KIPROP TUBEI.....ACCUSED

RULING

The applicant Collins Kiprop Tubei was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He is alleged to have murdered Joseph Mongare Nyamboga on 12/10/2012 at Naiswet Village in Rongai District in Nakuru County. Through the firm of Karanja Mbugua Advocate, he filed the notice of motion dated 12/11/2012, seeking to be released on bail pending the hearing of the charge he faces. It is the applicant's contention that he has a right to bail under **Article 49(1)(h)** of the **Constitution** unless the prosecution can show that there are compelling reasons to deny him bond; that he will turn up in court during the proceedings; he will not interfere with investigations and will co-operate with the prosecution during investigations if so required. The applicant has also sworn an affidavit. He deponed that when he first applied for bond after plea was taken, the prosecution seemed not to have any objection until he underwent a mental assessment. On 18/10/2012, the court ordered him to be released on a bond of Kshs.300,000/- with 2 sureties of like sum but some members of public booed and hacketed the court and the judge rescinded his order and directed that the Investigation Officer file an affidavit to investigate the situation on the ground. Arguments were made on 1/11/2012 and the court then ruled that there was still tension on the ground. According to the applicant, the circumstances on the ground have since changed and tension eased once the deceased was buried. Mr. Karanja Mbugua urged that the applicant will comply with all the terms that the court may impose and that most important reason for grant of bond is that the accused will turn up for trial. Counsel relied on the following decisions:-

1. **Grace Nyambura Kibui, Cr. 80/2010;**
2. **HCC 123/2011, Nicholas Kipsigei Ngetich v Rep;**
3. **HCRA 86/2010, David Njuno Mbiyu v Rep.**

The issues raised herein were considered in the above decisions. The application was opposed and Cpl Jackson Keli the Investigation Officer and Peris Biage Bosire, the widow of the deceased swore affidavits both dated 28/11/2012. Peris Biage deponed that on 1/11/2012 the judge denied the applicant bond after people had booed the court not to release the accused on bond due to the fact that investigations were not complete; that she has a lot of information leading to her husband's death; that she received threats to her life on 1/11/2012 and reported to Baraka Patrol Base; that the accused is her neighbour at Ngata and if released on bond her security will not be guaranteed. Cpl Keli also deponed that the report regarding threats to Peris' life had been received and booked under OB No. 70/1/11/2012 and a person who had

been paid to kill the said lady has recorded a statement to that effect. Police Officer Douglas Karithi Muthinja who was also assisting in investigations had earlier sworn an affidavit dated 22/10/2012, to the effect that the accused allegedly murdered the deceased over a land in Kaptembwa and that after the murder was committed the applicant went underground till he gave himself up in Mogotio after 4 days and is therefore unlikely to show up if released on bond.

I have given careful consideration to the submissions and affidavits filed by each side. There is no doubt that the applicant faces a charge of murder which is very serious indeed and the likely punishment is also very severe with the maximum being death.

The law on bail/bond is clear. By dint of **Article 49(1)(h)** of the **Constitution**, any person accused of committing a crime of any nature has the right to be released on bail/bond on reasonable conditions pending trial, unless there are compelling reasons for him not to be released. Whether or not a person will be released on bond depends on the circumstances of such each case. The prosecution bears the burden to prove the existence of compelling reasons. The above provision is predicated on the fact that every person is presumed innocent till proved guilty.

In this case the applicant is said to be a neighbour of the deceased. His home is known. It is the deceased's wife who fears for her life having purportedly received threats to her life. Unfortunately the court was not told the nature of the threats or who made them save for the statement exhibited in which a person claims to have been sent by accused to murder Peris.

Some of the criteria the court considers before granting bond is whether or not the applicant will interfere with witnesses, whether the accused will turn up for trial and the seriousness of the offence and resultant sentence. What the court considers will also vary from case to case depending on its own peculiar circumstances.

As regards the allegation that the applicant is likely to abscond, having given himself up to the police after 4 days of the occurrence of the offence, in my view, having given himself up to police there is no other evidence that he will or is planning to abscond. In any event the court can grant stringent terms to ensure that he remains within the court's jurisdiction and attends court as required.

The other ground is that the applicant will interfere with witnesses because the deceased's wife fears that her life is in danger having been threatened before. It is also alleged that somebody has recorded a statement as to how the accused intended to kill Peris. The accused is presumed innocent till proved guilty. If there is any evidence, it will have to be given on oath and tested on cross examination before the court can make a determination on the guilt or otherwise of the accused.

As regards the earlier fear that the applicant's life was in danger, that fear seems to have disappeared because the Investigation Officer did not allude to it. Besides, the State has a duty to ensure that all Kenyans are safe and secure and it cannot be said that their safety can only be guaranteed in prison.

The applicant has averred that he will not interfere with witnesses, will co-operate with prosecution if called upon to do so and will attend court when and as required. For the above reasons, I allow the application and it is ordered that:-

1. The applicant be released on his own bond of Kshs.500,000/- with two sureties of a similar amount;
2. Upon release, he will be reporting to the nearest police station (Mogotio) every Monday of the week till further orders of this court;
3. He will also attend court for mention once every month as shall be directed by the court;
4. He will not threaten or contact any of the prosecution witnesses during the pendency of this case;

5. In the event he violates any of the above conditions, the bond shall be cancelled forthwith.
6. Mention on 23/1/2013.

DATED and DELIVERED this 20th day of December, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Karanja Mbugua for the applicant

Applicant present
Mr. Marete for the State
Kennedy – Court Clerk