



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 34 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

GIDEON KIBET TOROMO.....ACCUSED

RULING

The applicant was brought to court on 14th April, 2010 charged with the offence of murder. This was before the promulgation of the Constitution which now, guarantees an arrested person the right to bail irrespective of the offence. He seeks in the present application to be admitted to bail.

By dint of **Article 49(1)(h)** of the **Constitution** an arrested person has a right to be released on bond or bail on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be so released. The applicant's application has been opposed by the State on the ground that there are compelling reasons not to admit him to bail. Those compelling reasons deposed in the affidavit of Cpl. Charles Waitara Mahenye, the investigating officer in this case, are based on information supplied to him by the applicant's wife, Christine Chesang. The effect of those reasons is that the applicant has a history of mental illness that recurs whenever he fails to adhere to his medical doses and instead indulges in alcoholic drinks.

A report dated 13th April, 2010 by Dr. J. W. Njau submitted immediately the incident in this matter took place confirmed the fact that the applicant suffers from a mental disorder known in medical jargon as paranoid schizophrenia, a disorder characterized mainly by delusion of persecution. Dr. Njau concluded at that time that in that state, the applicant could be a danger to himself or to others; and that he required hospitalization in a secure, psychiatric unit under close supervision.

Dr. Njau conducted a subsequent examination on the applicant on 22nd February, 2011, a day before this application was canvassed. In the latest report, it is noted that the applicant has been undergoing treatment as an in-patient and that he has responded well. The report concludes that the applicant is mentally stable and no longer a danger to himself or to others; that he understands the need to take medication daily and to attend to psychiatric clinic regularly.

Dr. Njau appeared before me and repeated the foregoing position. He explained to the court that the mental condition from which the applicant suffers develops gradually and can be detected before the trigger.

I have considered the grounds advanced by the State in opposing this application and the facts presented by the applicant's wife, brother, Charles Toromo and Dr. Njau in rebuttal. Is the court persuaded that there are compelling reasons to deny the applicant bond? It is common ground that the

applicant has a history of mental instability as a result of which he has been admitted twice at the Valley Hospital, Moi Referral Hospital and Mathare Mental Hospital. His problem started in 1998 while studying in Germany. Due to his condition, he was unable to complete the course and had to return to Kenya

The applicant is, as they say, a senior citizen, a medical doctor by profession, serving the Government of Kenya as the Deputy Director of Medical Services. He is a family man, married to Christine Chesang and has a young family of four children aged between seven (7) and sixteen (16) years. It is clear to me from Dr. Njau's and the applicant's wife's explanation that the applicant is capable of leading a normal life if he is consistent with his medication and if he can avoid (and I suggest stop) alcoholic drinks. That probably explains why although his condition is a matter of public knowledge, his employer has not found the necessity of terminating his services on medical grounds. Indeed there is no allegation that his condition has affected his relationship with his patients and workmates.

In my considered opinion, given his condition, the applicant will benefit greatly away from prison in-mates and far away from alcohol, but close to his family, medicine and his profession

Psychological and social processes appear to be some of the factors contributing to the applicant's situation. If there is any lesson that the applicant may not forget in his life, it is this trial. And if it is the failure to take his medicine or the crave for alcohol that has brought him to this place, as an adult, a family man, a professional, he must retrace his footsteps.

John Forbes Nash, the 82 year old leading American mathematician began showing signs of paranoid schizophrenia during his college years. Despite having stopped taking his prescribed medication, he demonstrated determination, completed his studies, developed scientific/mathematical theories and remained a prolific speaker in a number of world-class events. Against all odds, in 1994, he won a Nobel Prize in Economic Sciences.

Dr. Toromo can be John Nash. He can be John Nash but not when incarcerated in prison remand. It is his constitutional right to attend his trial when on bond because until the charges against him are proved, he is presumed innocent.

I will grant the applicant's prayer and admit him to bail on the following conditions:

- i) He will execute a bond of Kshs.300,000/= with two sureties of a similar sum; one of the sureties must be a medical doctor for obvious reasons, to ensure adherence to medication and to report to the Deputy Registrar of this court any unusual behaviour on the part of the applicant
- ii) He will attend court once a month or as may be directed by the court, starting 11th April, 2011.
- iii) He must regularly and consistently adhere to his dose of prescribed medication.
- iv) He must avoid (indeed, if he can abstain from) any substance that may affect his mental condition.
- v) He must not commit any criminal offence during the pendency of his trial.
- vi) He must not influence or interfere with the prosecution witnesses.

Orders accordingly.

Dated, Delivered and Signed at Nakuru this 11th day of March, 2011

**W. OUKO
JUDGE**

