



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO 14 OF 2019

REPUBLIC

-vs-

BOAZ KIPROTICH KIRUI

RULING

Bail

[1] The accused person has applied to be released on bond. His counsel M/S Saika submitted that the two families have reconciled, thus, there is no reason for denying him bail. She stated that the witnesses are willing to testify in this matter. Therefore, continued remand of the accused is a punishment to him.

[2] The prosecution counsel opposed the release of the accused on bail. She relied on the pre-bail report. She submitted that witnesses herein are members of the victim family and are yet to testify. They urged that the accused will interfere with the witnesses.

Legal threshold

[3] Under article 49(1)(h) of the Constitution: -

1. An arrested person has the right-

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

[4] An accused will only be denied bail where there are compelling reasons. It is now settled that compelling reason refers to very strong reason which brings conviction upon the court to deny bail. Instances which may constitute compelling reason include but not limited to: (1) interference with witnesses; (2) interference with evidence; and (3) likelihood of absconding.

[5] The prosecution cites two grounds: (i) that the accused is likely to interfere with witnesses especially those who are members of the family of the victim; and (ii) likelihood of absconding. The prosecution merely stated that he is a flight risk without giving any basis for the belief or concern. I reject that ground. However, I note that the probation officer captured the concerns expressed by the father of the deceased to the effect that he feared the accused may interfere with witnesses most of whom are family members and come from the area where the incident took place. On this subject, I am content to cite Sitati J in the case of **Republic v David Ochieng Ajwang Alias Daudi & 11 others (2013) eKLR** that:

"...It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility. In addition, the fact that the accused persons are so many is likely to send a cold shiver down the spines of such witnesses and corner them into resigning not to appear in court during the hearing of the case even if the accused persons turn up. In a nutshell there will be no witnesses to testify. As Makhandia J (as he then was) said in the Kiteme Maangi case (above), Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety."

[6] From the material available, most of the witnesses are members of the victim's family. The witnesses as well as the accused come from the same area where the offence occurred. The family has expressed fear if the accused is released he will interfere with witnesses. In these

circumstances, I do not think the fear is unfounded or far-fetched. Accordingly, I decline the request for bail. However, I will place conditions; that this case shall be fast-tracked and evidence of witnesses who are victim's family members be taken without delay. Once, that is done, the court shall revisit the question of bail. It is so ordered.

Dated. Signed and delivered at NAROK through Microsoft Teams online Application this 3rd day of February 2021

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F. GIKONYO

JUDGE

In the presence of:

- 1. Ms. Saika for the accused**
- 2. Accused person**
- 3. Ms. Torosi for DPP**
- 4. Mr. Kasaso – Court Assistant**

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F. GIKONYO

JUDGE