



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 60 OF 2019

REPUBLIC.....STATE

VERSUS

MAWANDA ASUMAN.....1ST ACCUSED

SSANKAAYI JAMIRU.....2ND ACCUSED

RULING:

In this matter, Mawanda Asuman and Ssankaayi Jamiru were charged with the offence of murder, Contrary to section 203 as read with section 204 of the Penal code.

The particulars of the offence are that on unknown date between 24th and 27th July, 2019 at Kimondi Forest in Kapsabet area, within the Nandi County, they jointly with others not before Court murdered Fedinand Onyeri Ondieki.

We took plea in this matter on 17/10/2019 and both accused persons pleaded not guilty. Mr. Mwaka for the 1st accused person and Miss Nafula for the 2nd accused person applied for release of the accused persons on bond or bail. Miss Nafula as well expressed the wish of the 2nd accused person to plea-bargain.

Prosecution opposed the release of the accused persons on bond. They requested for pre-bail reports and indicated they will file an affidavit in opposition.

The Court ordered for a pre-bail report. Plea-bargaining in respect of the second accused person was successful and on 10/3/2020 he pleaded guilty to the offence of murder and was sentenced to 15 years imprisonment.

A pre-bail report filed in respect of the first accused person shows he is a Ugandan who came to Kenya in the year 2013 to practice herbal medicine. Most of his family members live in Uganda but has a brother Bashir Athman who lives in Nairobi. If the accused is released on bond he will stay with one Judith Amekinata Eriking in Eldoret, who is also willing to stand surety for him. The report favours his release on bond.

Mr. Mwaka, the advocate for the first accused person, in his application for bond alleged that the accused has two houses, one in Machakos and another in Kisumu where he practices herbal medicine. He has a relative who resides in Nairobi. Though a Ugandan, he has a passport and is unlikely to abscond if released on bond. He is of poor health and prison situation is likely to worsen it. The offence he is charged with is bailable and should be released on favourable terms.

The prosecution opposed bail or bond and relied on two affidavits served by the Investigating officer, number 62024 CPL Reuben Muriuki. He avers that they have strong evidence against the 1st accused person. If accused is released he is likely to abscond and to interfere with witnesses.

The Constitution of Kenya 2010, under Article 49 (1) (h), an arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. It is therefore vivid that all offences are bailable but the right to bail or bond is not absolute as is limited by presence of compelling reasons. The question to ask in this case is whether the prosecution has availed compelling reasons to warrant denial of bond to the accused person.

The sworn affidavit dated 28/10/2019 shows that the accused is a flight risk. His Nationality is not well confirmed though alleged to be a Ugandan. He travels extensively across several, countries namely Kenya, Uganda, Rwanda and Tanzania.

Though the defence claims that the accused has a fixed abode in Kenya at Machakos and Kisumu, such is not confirmed by the pre-bail report. The report shows most of his relatives resides in Uganda of which includes his two wives, which strongly suggests he has no fixed abode in Kenya. He is charged with a serious offence of murder, of which attracts on the upper side a death sentence. The previously co-accused person pleaded guilty and is a prosecution witness. The averment by the Investigating officer shows that they have a strong case against him.

Weighing all these together, establishes that the accused is a flight-risk if released on bond.

As such, there exists a compelling reason as to why he should be denied bail or bond. His application therefore lacks merit and is hereby rejected.

S. M GITHINJI

JUDGE

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF MAY, 2021.

In the presence of:-

Mr. Mwaka for the first accused person

Madam Limo for the state

Ms Gladys - Court assistant

Hearing on 20/5/2021.

Production order to issue for the 2nd accused person who is now a prosecution witness for hearing on 20/5/2021.

S. M GITHINJI -JUDGE

5TH MAY, 2021