



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 77 OF 2019**

**BERNARD ODIWOUR OGOLLAH ..... APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

The applicant herein **BERNARD ODIWOUR OGOLLAH**, faces a charge of murder Contrary to section 203 as read with section 204 of the Penal Code. He has pleaded that he be placed on bail pending the hearing of his case. In the submissions filed by the counsel for the accused/applicant, it was noted that bail is a constitutional right under Article 49(1)(h) of the constitutional, which right can only be taken away upon proof of existence of compelling reasons. He relied on the case of **Republic Versus Mgunya and Another (2011)2EA36**, and **Republic Versus David Muchiri Mwangi (2018)eKLR**.

It was summed up that there are no compelling reasons herein that can make this court deny the applicant the right to bail.

The prosecution, through Mr. Naulikha, has opposed this application for bail. First on ground that the applicant is likely to interfere with the prosecution witnesses whom he knows well and who stay not far from the applicants own residence. Also that immediately after the incident, the applicant called the deceased's mother to laugh her off. Counsel maintained that these are compelling reasons and that the application for bail ought to be dismissed.

I have considered the 2 rival submissions on this application. Under Article 49(1)(h) of the constitution of Kenya.

***“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.”***

The right to bail is therefore available to all accused persons irrespective of the charges that they face. The right however, is not absolute. Same maybe denied should the prosecution prove the existence of any compelling reason. The important of this is that should the prosecution show the existence of any reasons good enough as to justify the denial of the right, then the right to bail may be denied to an accused.

Counsel for the applicant, Mr. Farah, has relied on the often cited case of Republic Versus Mgunya and Another(2011) 2EA, 36, on what would, generally be constitute compelling reasons, being;

- ***The nature of the charge***
- ***Strength of the prosecution's case.***
- ***The gravity of the punishment to case of a conviction.***
- ***Previous criminal record of the accused.***
- ***Likelihood of absconding***
- ***Likelihood of interference with witness.***
- ***Accused person's own safety.***

- **Public security, order and peace.**

These are just a few of the considerations the court may make in deciding on whether or not to grant bail. And the onus is on the prosecution to prove the existence of the particular compelling reason.

The prosecution has maintained herein that the applicant is likely to interfere with prosecution witness if released. The basis of these submissions are that the applicant (accused) knows the witnesses well as they live within close proximity. The prosecution however, has not shown any scintilla of evidence that the applicant has attempted to interfere with the said witnesses in any way.

Second, there is no doubt that the applicant is facing a serious charge with a potential stiff sentence in case of conviction. But as shown above, bail is a right to every accused person irrespective of the nature of the charge. The serious nature of the charge the applicant faces herein therefore cannot by itself be a compelling reason.

I am in totality not convinced that the prosecution has proved the existence of any compelling reason herein that can make this court deny the accused the right to bail. I dismiss the objections of the prosecution and order that the accused/applicant may be released on bail on the following terms:-

- 1. Accused may be released on a bond of Ksh. 1 million with surety of a similar amount.**
- 2. In the alternative, the accused may be released upon the deposit in court of Kshs.200,000/= in cash bail.**
- 3. The accused, is ordered never to interfere with or in any way contact directly or indirectly, any way contact directly, or indirectly, any prosecution witnesses till this case is determined.**
- 4. The accused, upon release on bond, is ordered to attend court at all times as may be ordered by the court from time to time till this case is determined.**

Ordered accordingly.

**D. O. OGEMBO**

**JUDGE**

**16.6.2021.**

Court:

Ruling read out in court (online) in the presence Mr. Farah for accused, the accused (Nairobi remand), and Mr. Okeyo for the state.

**D. O. OGEMBO**

**JUDGE**

**16.6.2021.**