



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO.E007 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ABDIJABIR RASHID OSMAN.....ACCUSED**

**RULING**

The accused is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code to which he pleaded not guilty. His advocate Mr.Behailu thereupon applied for the accused to be granted bail. He pointed out that the accused is a Kenyan citizen who lives at Elwak. That he is married and that his wife gave birth 2 weeks ago. That he is not a threat to the witnesses for the prosecution. Counsel pleaded for reasonable bond terms.

The prosecution through the learned prosecution counsel Mr. Ochieng opposed the release of the accused on bond on the grounds that the accused lives on the border town of Elwak and that he was arrested when he was trying to flee towards the Kenya-Somalia border. Therefore, that there is likelihood of him jumping bail. Further that there is likelihood of him interfering with witnesses as he is a Kenya Police Reservist who has access to guns and that he is known to be a violent person as he is facing a separate charge of assault.

The grounds of opposition were supported by the affidavit of the Investigating Officer, Sgt. Ngatia sworn on the 7<sup>th</sup> June 2021.

In reply Mr. Behailu urged that the fact that the accused lives on a border town cannot be used as reason to deny him bail. That there was no substantiation that the accused was arrested while trying to flee. That it was a mere allegation that the accused is a violent person. That the assault case number has not been stated.

I have duly considered the application and the objection thereto. Under the provisions of Article 49(1)(h) of the constitution, an accused person facing a trial has a right to be released on bond or bail on reasonable conditions unless there are compelling reasons not to be released. In the case of **Republic vs William Mwangi Wa Mwangi (2014)eKLR** it was held that:

**It is trite law that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bond.**

I am in agreement with the advocate for the accused that the fact that the accused lives close to the Kenyan border with Somalia is not sufficient reason to deny him bail. The prosecution did not substantiate the assertion that the accused was arrested while trying to flee across the border as the person who arrested him was not disclosed. The assertion that the accused may interfere with witnesses was based purely on speculation and not facts. More so, the fact that the accused has a pending case that is not related to the present charges cannot be used as a ground to deny him bail.

However, the assertions by the prosecution cannot just be wished away. They call for enhanced bond terms so as to ensure that the accused turns up for trial taking into consideration that he is facing a serious charge of murder. I grant the accused bond of Ksh. 1,000,000/= with two sureties of similar amount.

**DELIVERED, DATED AND SIGNED AT MARSABIT THIS 8<sup>TH</sup> DAY OF JUNE 2021**

**JESSE N. NJAGI**

**JUDGE**

**In the presence of:**

.....for prosecution

.....for accused

Accused –

Court Assistant –

30 days R/A.