



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT LODWAR

CRIMINAL CASE NO. E005 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

WILFRED KIBICHIY TOO.....ACCUSED

RULING

1. The accused person is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particular thereof were that, on the 12th day of January 2021 at Kakong area, kainuk Division within Turkana south sub –county, murdered **SUSAN NASIRU EMURE**.

2. He pleaded not guilty to the said charges and in compliance with the provisions of Article 49 (1) (h) of the constitution, moved the court to be released on bond/bail, pending the hearing and determination of the cause.

3. To enable the court to determine the issues of bond, the court called for a pre-bail report, dated 17th day of March, 2021, in which it was stated that the accused was aged 27 years, from Bindura village, Tulwet location, Keses Sub County within Uashin Gishu County and at the time of the alleged commission of the offense was an Administration Police Officer attached to Kakong Police Post.

4. It was stated that the same had a fixed residence, married to one wife with one child, aged two (2) years old. It was stated that the family of the deceased were still hostile and did not want to see him anywhere in Turkana County and against his release, while his family stated that the accused, had good social rating at home, with sureties who will ensure that he appears in court when needed.

5. It was stated that the accused person was not safe in Turkana County, as there was hostility on the ground, with indications that the same will be killed if seen in the area. It was therefore recommended that the admission to bail/bond be deferred for the accused person's own safety.

6. At the hearing herein, Mr. Tanui for the State, submitted that if granted bond, the accused will be required to travel to Lodwar for trial, which was likely to expose him to threat and therefore bond should be denied.

7. On behalf of the accused, it was submitted by M. Pukhe that the pre-bail report was not binding on the court and that since the prosecution had not filed any affidavit, there was no compelling reason to deny the accused bond, the same having ceased to perform duties of an Administration Police Officer.

8. It was contended that the accused had a permanent place of residence which he shall go to upon release on bond. It was submitted that the same was willing to abide by any terms and conditions as set out by court

DETERMINATION

9. Bond is a constitutional right of any accused person which may only be limited where there are compelling reasons advance by the prosecution to the satisfaction of court on a balance of probability.

10. What constitute compelling reasons are now set out in the Bond/ Bail Policy Guidelines to include but not limited to:-

- a) the nature of the offence and the likely punishment,
- b) the strength of the prosecution case,

- c) the character and antecedent of the accused,
- d) the failure of the accused person to observe bond terms,
- e) likelihood of interfering with witnesses,
- f) the need to protect the victims of the crime,
- g) the relationship between the accused person and potential witnesses,
- h) whether the accused is a child offender,
- i) whether the accused person is a flight risk,
- j) whether the accused is gainfully employed,
- k) public order peace or security and
- l) protection of the accused person.

11. In this cause the only compelling reason advanced through the pre-bail report, is that the family of the deceased were still hostile towards the accused person and that there is hostility on the ground. It has further been stated that the accused if granted bail, will have to travel from the alternative place of abode provided for, to Lodwar, thereby exposing himself.

12. These to my mind are not sufficient compelling reasons to enable the court deny the accused person the enjoyment of his constitutional right to bail as they can be mitigated through appropriate bond and bail terms.

13. In the case of **KELLY KASE BUNJIKA v REPUBLIC [2017] eKLR** the court had this to say:-

“It is clear that the primary consideration for bail is whether the accused will attend his trial for charges facing him and it must therefore be a compelling reason if it is demonstrated that the accused person is likely to fail to attend court proceedings. The question in this matter becomes whether there is on a balance of probabilities evidence that the accused is likely to abscond.”

14. There is no evidence tendered by the prosecution that the accused person is unlikely to attend his trial from Uashin Gishu County, neither is there any evidence that the same is likely to interfere with the prosecution witnesses, the probation report having confirmed that there is no indication of interference. The cost of the accused to attend trial in itself is not a ground to deny bail and the hostility on the part of the family of the deceased which is expected, is to be balanced with the duty of the state to provide security to all its citizens including the accused.

15. I therefore find and hold that there being no compelling reason to deny the accused bail/ bond, the same to be released on the following terms:

A) Bond of Kenya shillings five hundred thousand (Ksh. 500,000) with one surety of similar amount

B) In the alternative cash bail of Kenya shillings two hundred thousand (ksh. 200,000) with one surety of similar amount

C) The accused person shall upon his release, be escorted by the Investigating Officer in the case to his residence to collect all his personal belonging therefrom and shall not thereafter be seen at the said police post during the period of the trial

D) The accused person shall provide the Investigation Officer with the details of his local Chief and shall upon release from custody report to the said area Chief on the last Thursday of each subsequent month, who shall make a report to the said Investigating Officer of the accused reporting.

E) The accused person shall make no contact of whatever nature with any of the prosecution witnesses during the period of the trial

F) In default of any of the terms herein, the bond/bail granted shall stand set aside without any further order of this court.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3rd DAY of JUNE 2021

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Tanui for the State

Mr. Pukhe for the Accused person

Accused person present

Potishoi/Biwott – court assistants