

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO E009 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

NEHEMIAH KIPNGETICH KOECH alias STAMINA.....ACCUSED

RULING

1. The application before me seeks to have the Accused Nehemiah Kipngetch Koech alias Stamina released on bail pending trial. He is charged with the murder of his father one Joseph Kipkoech Tonui. The offence is alleged to have been committed on 12th December 2020 at Olingoswet village, Kapkimolwa location within Bomet County. The Accused took plea on 9th February 2021 and pleaded not guilty. His case is set to commence on 25th October 2021.

2. The application is not opposed by the State. The court called for a pre-bail assessment report and the same was filed on 13th April 2021.

3. In urging the application defence counsel Ms. Rotich submitted that the Accused was not a flight risk and that his family was willing to stand surety for him and receive him back home. Counsel submitted that the pre-bail report was favourable to the Accused.

4. I have considered the application. I have also considered the pre-bail report dated 31st March 2021. The pre-bail report states that the Accused was a law abiding citizen with great entrepreneurial skills. That he was the breadwinner of his family and had never abused alcohol or drugs. It states that the Accused's family and clan elders held a meeting in which they resolved to support his release on bail. The report recommends that the Accused be considered for bail.

5. Bail is a Constitutional right granted by Article 49 (i) h of the Constitution which states:-

“an arrested person has the right to be released on bond or bail, on reasonable conditions, pending charge or trial, unless there are compelling reasons not to be released.”

6. It is clear from the above provision that the right to bail or bond is not absolute and can be curtailed where there exist compelling reasons.

7. In this case, the victims of the offence are also the family of the Accused. This is because the deceased in this case was the Accused's father. The probation report while categorically stating that the family was supportive of the Accused's release on bond did not make any mention of the circumstances of the commission of the offence or whether any of the family members were witnesses in the case. It is the duty of the court, while exercising discretion to grant or not to bail, to preserve the integrity of the trial. (See **R.V. Fredrick Ole Leliman & 4 Others, 2016 eKLR**; See also **R.V. Robert Kipkorir Tonui, 2020 eKLR**).

8. In view of the above, I am persuaded not to grant the Accused bail at this stage. He shall remain in custody until the civilian witnesses have testified.

9. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 21ST DAY OF JULY, 2021.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Counsel Ms. Rotich, Mr. Murithi for the DPP, and Kiprotich (Court Assistant).