



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KILGORIS
CRIMINAL CASE NO. E003 OF 2021
(CORAM: F.M. GIKONYO J.)

REPUBLIC

VERSUS

MESHACK LEDAMA KORIKO.....ACCUSED

RULING

BAIL

[1] The accused herein is facing a charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. On 19th May 2021, the accused through his defence counsel Mr. Shira orally applied for the accused to be released on bail pending the trial.

[2] The Prosecution opposed release of the accused on bond and alleged existence of compelling reasons which were expressed in an affidavit by **CPL Juliet Kimwei** dated 31st May 2021. The accused filed a replying affidavit in response.

[3] The two grounds advanced by the prosecution are: -

i) That that the accused is a flight-risk; and

ii) That there a likelihood of interference with witnesses by the accused.

Flight-risk

[4] They provided particulars to demonstrate that the accused is likely to abscond if granted bail. According to the prosecution; the accused after the commission of the offence of murdering Samuel Kiu Kiyuoni went missing only to come back and also participated in the murder of Henry Nkoitoi Koriko on 13th June 2020 and disappeared again until he was traced and arrested within Nakuru County. From these antecedents, they believe the accused person will abscond and go into hiding.

Of interference with witnesses

[5] In support of likelihood of interference with witnesses by the accused, the prosecution stated that, the accused person's relatives have issued threats to the deceased's father. He reported the matter vide Kilgoris Police Station OB no. 04/06/04/2021. They say that the accused person is likely to mobilize and/ or liaise with his relatives to threaten and intimidate the potential witnesses who know how the deceased persons were brutally murdered.

Defence: allegations not proved

[6] Ms. Mireri for the accused urged the court to release the accused. She argued in her oral submissions that the affidavit contains mere allegations without tangible evidence. The allegation on sale of ancestral land are unfounded. That no sale agreement was produced.

[7] Ms. Mireri continued to submit that threats alleged to the victim are also unfounded. It is not a reason to deny bail. She submitted that no evidence of absconding has been adduced. She urged this court to reject the prosecution's request as there are not compelling reasons to deny bail.

ANALYSIS AND DETERMINATION

[8] I have considered the submissions by both counsel for the accused and the state. I have also considered the IO's affidavit, replying affidavit and the facts presented to me.

[9] Article 49 (h) entrenches the right of the arrested person to be released on bail pending charge or trial unless there are compelling reasons for refusing bail. Compelling reasons was stated in the case of **R vs. JOKTAN MAYENDE & 4 OTHERS [2013] eKLR** to be:

“...reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.”

[10] In this case, the prosecution has adduced two grounds which they believe are compelling reasons for which the accused may be denied bail, to wit;

(a) Likelihood of absconding; and

(b) Likelihood of the accused interfering with witnesses.

[11] These two grounds, if proved, constitute compelling reasons in the sense of article 49(1)(h) of the Constitution for such events or incidents undermine the whole purpose of fair trial, the right of victims to receive justice as well societal expectation that culprits of crime are brought to justice.

Interference with witnesses

[12] The investigating officer averred in his affidavit that there a likelihood of interference with witnesses by the accused. According to the prosecution, the accused person relatives have issued threats to the deceased's father. They also believe that the accused person is likely to mobilize and/ or liaise with his relatives to threaten and intimidate the potential witnesses.

[13] The accused in his replying affidavit stated that the allegations that his relatives have issued threats to the deceased father are new to him and that cannot be used against him as they are different persons from him and hence should be charged separately.

[14] It is not denied that the accused hails from the same village with the deceased's family. The prosecution has shown that the relatives of the accused have already threatened the father of the deceased and the matter was reported to the police. Whereas such persons should be held responsible for their actions, the court should consider the entire circumstances of the case in determining the likelihood or otherwise of the accused to interfere with witnesses. Interference need not be active. It may also be passive. Given the antecedents provided by the prosecution, that he now faces two murder cases, the possibility that the presence of the accused may make witnesses resign to fear; this is not far-fetched idea in this case. I am content to cite Sitati J where she stated in the case of **R VS. DAVID OCHIENG AJWANG ALIAS DAUDI & 11 OTHERS [2013] eKLR** that:

"...It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility. In addition, the fact that the accused persons are so many is likely to send a cold shiver down the spines of such witnesses and corner them into resigning not to appear in court during the hearing of the case even if the accused persons turn up. In a nutshell there will be no witnesses to testify. As Makhandia J (as he then was) said in the Kiteme Maangi case (above), Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety."

[15] In addition to genuine fear that he may interfere with witnesses, the prosecution did establish real or cogent circumstances which tend towards possibility of interference with witnesses. I therefore, find and hold that the prosecution has proved that there is likelihood of interference with witnesses by the accused as they come from same locality.

Of Flight-risk

[16] The prosecution stated that they have reason to believe that he is a flight risk. They have stated that on 13/6/2020 the investigating officer established that the accused person and his brother had left their ancestral home and sold the family property. The accused has no known fixed abode. If released, he is likely to abscond as he faces two the murder charges.

[17] The accused in his replying affidavit stated that his family still lives at Oltanki area on the same property they lived when the alleged offence occurred and they have not moved to any other place. That no evidence was produced to support the allegation that their ancestral land has been sold to another person.

[18] The foregoing notwithstanding, the prosecution gave circumstances which show that the accused was being sought by the police for allegedly murdering Samuel Kiu Kiyuoni but went into hiding. They also believe out of their investigations that the accused only came back and also participated in the murder of Henry Nkoitoi Koriko on 13th June 2020 and disappeared again until he was traced and arrested within

Nakuru County. There is nothing to show that the accused had been living at his ancestral home during the material times. He was arrested in another County- Nakuru County. Now he faces two murder cases. In such circumstance, the attendance of the accused during trial may not be guaranteed. The uncontroverted evidence before the court is that the accused is likely to abscond if released on bail or bond. Accordingly, I find that the prosecution has proved that the accused is a flight-risk. It bears repeating that such is a compelling reason under Article 49(1) (h) of the Constitution for which bail will be denied.

[19] In the upshot, I find and hold that the prosecution has established compelling reasons to deny the accused bail. I decline his request for bail. The accused shall remain in custody during the hearing of the case. It is so ordered.

Dated, Signed and Delivered at Kilgoris Through Microsoft Teams Online Application this 7th day of July, 2021

F. GIKONYO M.

JUDGE