



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 89 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

GODFREY MUTETIA KIBEAA alias KEVOO.....ACCUSED

RULING

1. Before the Court is an application dated 28th April 2021 by the accused seeking for release on bond/bail terms pending the hearing and determination of the case. The Court had previously heard a similar application for bond/bail and refused the same by its orders of 5th March 2019.

The Application

2. The accused urges that in his previous application, the Prosecution never brought forth any evidence before the Court to show that his release on bond would disturb public order. He urges that he has been in custody since 19th September 2018 and the hearing of the case is likely to delay due to the effects of the COVID-19 pandemic. He urges that if granted bond/bail, he will abide and comply with the orders of the Court. He also urges that he has many relatives who are ready to stand surety for him.

Prosecution's Reply

3. The application is opposed by the Prosecution by the replying affidavit of No. 71875 CPL Joshua Otieno Molla of DCI Timau sworn on 21st July 2021. The Prosecution's main contestation against the release of the accused person on bond is hinged on the claim of witness intimidation and interference. They urge that the accused murdered the deceased in one of the Prosecution witnesses' house, later on forcing the said witness to dispose of the deceased body and that the accused has threatened the witness and demanded that the witness doesn't testify against him. They urge that if the accused is granted bail, he may harm the witness. They further urge that the accused is a flight risk because he does not have a fixed place of abode as he sold his portion of land. That upon his arrest, the accused did not disclose his true name Kevin but submitted the names Godfrey Mutethia Kibea. That there are no exceptional or unusual circumstances to warrant the accused release on bond. That in view of the severity of the sentence to be suffered by the accused if convicted, there is a high probability that if released, the accused may interfere with prosecution witnesses or may be lynched by the public.

Determination

4. The right to bail pending trial is recognized under Article 49 of the Constitution of Kenya, and Section 123 of the Criminal Procedure Code. The accused has been charged of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code which attracts a maximum sentence of death penalty. A similar application for bail has previously been denied herein.

5. This Court agrees with the Prosecution that while the right to bail is recognized in the Constitution even for capital offences such murder that the accused is charged with, the grant of bail pending trial is not automatic. As per Article 49 (1) (h) of the Constitution, it may be denied where the prosecution demonstrates compelling reasons for refusal.

6. Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015 sets out the judicial policy on bail and bond at page 25 thereof as follows: -

The following procedures should apply to the bail hearing:

(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

- a) *That the accused person is likely to fail to attend court proceedings; or*
- b) *That the accused person is likely to commit, or abet the commission of, a serious offence; or*
- c) *That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or*
- d) *That the accused person is likely to endanger the safety of victims, individuals or the public; or*
- e) *That the accused person is likely to interfere with witnesses or evidence; or*
- f) *That the accused person is likely to endanger national security; or*
- g) *That it is in the public interest to detain the accused person in custody.*

7. Noting that the accused person's previous application for bail was denied, this Court expected the accused to urge that the circumstances contributing to his denial of bail have since changed. He however has not done so but merely states that the Prosecution never brought forth any evidence to support their contestation for him to be granted bond. The Prosecution's current challenge to the accused application for bail is hinged on the claim of witness intimidation and interference, which are the very reasons the previously urged. To this Court's mind, the circumstances leading to denial of bond are still prevailing.

8. Although there is some sense in the argument that no evidence was brought forth to support the contestation's by the Prosecution, this Court observes that the standard in determination if the matter of bail is based on a balance of probabilities as set at in Kenya Judiciary's bail and bond policies as outlined above. To this end, this Court finds that the alleged circumstances of the murder, involving the use of a third party (now a Prosecution witness) to dispose of the deceased body after killing the deceased in the said third party's house call for denial of bail. The Court recognizes not only the need to secure the accused attendance in Court for trial, but also the need to protect the integrity of the Prosecution's case as well as the safety and lives of witnesses under the witness protection policy.

9. The Court also accepts that the severity of the sentence likely to be imposed if the accused is convicted for the charge he faces is a more likely than not, greater incentive for him to abscond so as to avoid punishment.

10. The court finds that the Prosecution has set out compelling reasons for refusal of bail in the fact that there is a likelihood of the accused interfering with and harming witnesses; and in order to protect the witness as well as to secure the accused person's attendance in Court for trial for the sake of the due administration of justice.

ORDERS

11. Accordingly, for the reasons set out above, this Court makes the following orders:

- i) The Applicant's application for bail pending trial dated 28th April 2021 is hereby declined.*
- ii) The Applicant may make a subsequent application for bail once the crucial witnesses testify.*

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF SEPTEMBER 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Kaberia Arimba & Company Advocates for the Accused/Applicant.

Ms. B. Nandwa, Prosecution Counsel for the Respondent.