



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE E047 OF 2020

REPUBLICPROSECUTOR

VERSUS

ZACHEUS WASONGA BALLAH ACCUSED

RULING

The person **ZACHEUS WASONGA BALLAH** has made a formal application, dated 18.1.2021 to be placed on bail pending the trial of his case. The application of the accused has been opposed by the prosecution side on several grounds.

Ms. Kimani, appearing for the state, first submitted that the accused is likely to interfere with witnesses if released on bail. That the accused and the deceased's mother cohabited for 4 months before the incident. That the deceased's sister aged 5 years was a witness in the matter and that due to this relationship, the accused is likely to intimidate the witness.

It was further submitted that the accused is a flight risk. That he has no known community ties and the investigating officer has been unable to establish his alternative place of abode. That coupled with the strong prosecution's case and the severity of the sentence in case of conviction, there is reason to believe that the accused would abscond if released on bail.

Mr. Ayuo for the accused made further submissions. First, that the prosecution has not shown any evidence of interference with witnesses. And secondly that the accused has close family ties as shown by the fact that his mother and sister are both willing to stand surety for him.

I have considered the submissions herein of both the defence and the prosecution sides, under Article 49(1)(h) of the constitution;

“An arrested person has the right-

- To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The constitution therefore guarantees all accused persons, irrespective of the charges that they face, the right to be released on bail. The same constitution however, also has put a rider to the right to bail. That the same may be denied should there be compelling reasons. In simple terms, should the prosecution show good, cogent and strong reasons that would justify the denial, the right the bail would be denied.

Questions have been asked on what exactly constitutes compelling reasons. In the Bail and Bond policy Guidelines developed by the National Council on the Administration of Justice (Paragraph 4.9), some of the considerations that the court would weigh in deciding on the issue of compelling reasons are listed as follows:-

- The nature of the charge and the seriousness of the punishment in case of conviction.***
- The strength of the prosecution's case.***
- Character and antecedents of the accused***
- Failure to observe bond terms in previous cases.***
- Likelihood of interference with witnesses.***
- Relationship between the accused and the witnesses.***

- *Whether the accused is a flight risk.*
- *Whether he is gainfully employed.*
- *Public order, peace or security.*

Without a doubt, this list is not complete. In our present case, the prosecution has raised a couple of issues as amounting to compelling reasons. I shall deal with them in the order as raised:

i) Likelihood of interference with witnesses:

It was submitted that the accused and the mother of the deceased cohabited for up to 4 months and so the accused, knowing the witnesses well, is likely to interfere with them and or intimidate them. The prosecution has however, not shown any incident of interference with the same witnesses. As it were, the accused and the mother of the deceased had cohabited for only 4 months. They are not married and it is not shown if the cohabitation would continue, if at all, in the long term as to make the witnesses vulnerable.

ii) That the accused has no known place of abode.

Regarding this ground, it was submitted that the investigating officer has been unable to locate the place of abode of the accused. It was however, not shown what efforts the investigating officer has put towards finding out the accused's place of abode. The accused, on the other hand, has maintained that he has strong community ties and that his mother and sister are ready and willing to stand surety for him. In the circumstances, I do not find persuasive. The prosecution's submissions that the accused has no place of abode.

iii) Strength of prosecution's case

There is no doubt as to seriousness of the charge of murder that the accused faces. The court however, is not, at this stage, able to discern whether or not the case of the prosecution is indeed strong. This is because so far the hearing of the case is yet to commence.

In any case, the accused enjoys the right to be presumed innocent till it is proved otherwise. The ground therefore also fails.

The main objective of the right to bail is to secure the attendance of an accused person for his trial. I am not convinced that the prosecution has shown or proved the existence of any compelling reason good enough to make this court deny the accused the constitutional right to bail. On the other hand, I find that it is in the interest of Justice to place the accused on bail on appropriate terms.

I accordingly allow the application of the applicant dated 18.1.2021 and order that the accused may be released on bail on the following terms:-

i) A bond of Kshs. 2 million with 1 surety of a similar amount.

ii) In the alternative, a cash bail of Ksh.300,000/=.

iii) The accused is ordered never to interfere with any prosecution witnesses directly or through proxy till this case is determined.

iv) The accused, before his release, to furnish the court specific details of his permanent place of abode. He shall also produce a letter of his chief and details of at least 1 contact person including name, copy of Identity card and phone number.

v) He is upon being released, ordered to attend court at all times as may be ordered from time to time till this case is determined.

Orders accordingly.

D. O. OGEMBO

JUDGE

2.11.2021.

Court:

Ruling read out in open court in the presence of the accused, Mr. Ayuo, for the accused and Ms. Kimani for the state.

D. O. OGEMBO

JUDGE

2.11.2021.

Court:

Matter to be mentioned before the Presiding Judge for allocation of a **Court**.

Mention 10.11.2021 (Nzioka J.)

D. O. OGEMBO

JUDGE

2.11.2021