



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 36 OF 2019

REPUBLICPROSECUTOR

VERSUS

LOYFORD MUNENE1ST ACCUSED

ERICK BENSON KIRIMI2ND ACCUSED

RULING ON BOND

1. The 2nd accused was brought into the consolidated charge sheet on 4/2/2021 after he had been arrested and charged in Criminal case no. E003 of 2020. The 1st accused who is the 2nd accused’s brother was granted bail upon terms that he executes a personal bond of the 500,000/= and a surety of the same amount.

2. In opposing bail for the 2nd accused the Investigating Officer Cpl Jimmy Kitivo by affidavit sworn on 24/2/2021 relied principally on the grounds of likelihood of interference of witnesses and the accused being a flight risk as follows:-

“6. That all the key prosecution witnesses reside in the same localities with the 2nd accused person. There is a high possibility of interference of the witnesses and also a possibility of the witnesses being threatened if the 2nd accused his released on bond.

7....

8. That immediately after the commission of the offence on 18th day of December, 2017, the 2nd accused person has been at large and on the run up until the month of September 2020 when he was arrested and arraigned before the court on the 29th September, 2020. This is a period of close to 3 years on the run.

9. That the accused person is indeed a flight risk. After the commission of the offence this whereabouts have been unknown for a period of three years since during the said period he went without going to his place of abode at Kianjogu.”

3. In reply, the applicant filed a Replying Affidavit sworn on 1/11/2021 principally responding to the issue of lack of fixed abode and having been on the run, as follows:-

“3. The allegation that after the commission of the alleged offence on 18.12.2017, I ran away from home were untrue.

4 That I was living in Igoji up until my arrest in September 2020.

5. That in early 2018, I was employed at Kinoro Grits High School as a casual laborer. Kinoro Girls area is situated at Igoji area.

6. That after three months of working there, I got a better employment at Kionyo factory where I got placement still as a casual labourer. I worked there from June of 2018 till early 2020 after which I got a job as a lorry driver where I worked until my arrest in September 2020 (Annexed and marked EK1 is a letter from Kionyo factory confirming that I was working there.

7. That my responsibilities as a lorry driver involved transporting cargo and goods from Meru to other parts of the County that our most frequent destination was Muranga County.

8. That during that period of time I was in and out of Meru as the nature of my job which involved collection of goods from various

parts of Meru to the rest of the County.

9. That my family (i.e. my wife and children -who are both minors) also they resided and still reside in Igoji area within Meru County and I would more often not visit them during that period of time.

10. That my parents and some of my siblings also reside there and I used to visit them whenever I was around.”

4. The court has considered the application for bail and counsel’s submission thereon. Counsel for the applicant urged that the applicant had fixed abode and “There could only have been laxity on the police to arrest the accused.”

5. The court, however, notes that the trial of the 1st accused stalled for the reason with the 2nd accused was still at large. It was close to three years since the alleged murder on 18/12/2017 when the 2nd accused was arrested on 29/9/2020. The letter purportedly indicating his employment by Kionyo Factory is on an unofficial letter head and there is no letter of engagement with the Kinoro Girls High School and the employment as a lorry driver for the period immediately before the arrest as alleged, The letter from Kionyo Factory is postdated 18/10/2021 to vouch for the period from June 18th 2018 to 2 years thereafter.

6. If it was an issue of laxity of the police to arrest the said accused as submitted by counsel Ms. Muna, with respect, that fact of his availability would have been raised by his brother the 1st accused herein who had been denied bail for the reason that his brother the 2nd accused was at large.

7. And the question before the court is why as Judge Mabeya wondered of the 1st accused, was it difficult for the police to arrest him for so long was? I am not persuaded that that it was for laxity of the police to arrest the 2nd accused. I would find that the 2nd accused was truly not available at the place where he claims to have had a fixed abode. And he must be considered to have been on his run.

8. I find the 2nd accused to be a flight risk having already been on the run since the alleged murder of 18/12/2017 until his arrest and arraigned in court on 29/9/2020. It is a sufficient compelling reason to refuse bail for the 2nd accused.

ORDERS

9. Accordingly, for the reasons set out above, the applicant’s application for bail pending trial is declined.

DATED AND DELIVERED THIS 15TH DAY OF DECEMBER, 2021

EDWARD M. MURIITHI

JUDGE