



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 54 OF 2019

REPUBLICPROSECUTOR

VERSUS

JOSHUA KING OGACHI.....ACCUSED

RULING

[1] The accused person herein, **Joshua King Ogachi**, was arraigned before the Court on the **23 September 2019**, on a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The particulars thereof are that, on the **11 September 2019** at Miti Moja area in Annex within Uasin Gishu County he murdered **Robinah Moraa Nyandoro**. He denied the allegations, whereupon his Counsel, **Mr. Barongo**, applied for his admission to bail pending the hearing and determination of this case.

[2] The State is opposed to the application on the basis of the averments set out in the affidavit of **Cpl. Ali Osman**, sworn on **28 October 2019**. At paragraph 6 of that affidavit, it was deposed that:

“...the cruel way in which the deceased was murdered is still an issue with the family of the deceased, her colleagues and the general members of the public, who are yet to come to terms with that incident and by releasing the accused on bail, it might provide a good chance for revenge.”

[3] It was therefore the contention of the State that the very life of the accused may be jeopardized should he be released on bond. It was also the contention of the State that the accused is a danger to himself, given that he had tried to commit suicide before his arrest, by taking some poisonous substance. To buttress this assertion, the Prosecution annexed two Discharge Summary documents issued at Nakuru Level 5 Hospital and Moi Teaching and Referral Hospital, showing that the accused had twice ingested poison with a view of committing suicide between **12 September 2019** and **16 September 2019**. These events happened immediately after the occurrence of the alleged murder.

[4] It was further the contention of the Prosecution that the accused is a flight risk because he has no fixed abode. Their apprehensions are premised on the fact that, after the death of the deceased, the accused fled from the scene to Nakuru, which is where he was arrested. And lastly, it was averred in paragraph 9 of the Affidavit of **Cpl. Osman** that, if released, the accused might interfere with the Prosecution witnesses who are all well known to him, including their contacts and physical locations. The Prosecution also relied on the Pre Bail Report filed herein, dated **28 January 2020**. That report shows that the family of the deceased is still bitter and is averse to the release of the accused on bond. It is thus for these reasons that the Court was asked to find that there are compelling reasons for the continued incarceration of the accused person.

[5] On behalf of **Mr. Barongo, Mr. Miyianda, Advocate**, urged the Court to look at the flip side of the fact that the accused made two attempts to end his life; and find that here is a person in dire need of the sort of care and support that only his family members can give; including the need to ensure that he receives appropriate medical attention. He therefore urged the Court to grant him bail and leave it to his family to furnish the requisite security.

[6] I have given careful consideration to submissions made herein; and in particular, the averments made in the affidavit of **Cpl. Osman**. Needless to say, that bail pending trial is a constitutional right. **Article 49(1)(h)** of the Constitution is explicit that, unless there is some compelling reason, an accused person ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. That provision reads thus:

“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.”

[7] Hence, in **Nganga vs. Republic [1985] KLR 451**, it was held that:

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;

a) the accused will fail to turn up at the trial or to surrender to custody or;

b) the accused may commit further offences; or

c) he will obstruct the course of justice.

The primary purpose for bail is to secure the accused person’s attendance to court to answer the charge at the specified time.”

[8] The assertion by the State that the accused was staying with the deceased who was his girlfriend remains unrebutted thus far. From the material availed before the court, by way of affidavit evidence, the accused was yet to establish his business in Eldoret Town; and therefore cannot be said to have fixed abode. Similarly, there is considerable merit in the Prosecution’s assertion that the accused is a flight risk; the accused having fled the scene after the incident. And, in the Pre Bail Report, it is opined that chances of the accused jumping bail are high. I have no reason to doubt the view of the Probation Officer in that regard.

[9] More importantly is the contention that the accused may not have sufficiently stabilized his thinking process following the incident. The two Discharge Summary documents exhibited before the Court as annexures to the affidavit of **Cpl. Osman** confirm that he twice attempted to ingest poison with a view of committing suicide. In the premises, it would be in his interest that he remains in custody for now. There is no doubt that he can and will be in a position to receive the needed assistance while in custody.

[10] In the premises, I am satisfied that compelling reasons have been given herein by the Prosecution to warrant the continued incarceration of the accused. His bail application is accordingly dismissed, but with an order that the same can be renewed at an opportune time in the future should his circumstances warrant such a review.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY, 2020

OLGA SEWE

JUDGE