



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT BOMET**

**CRIMINAL CASE NO.22 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JULIUS KIPYEGON BII.....1<sup>ST</sup> ACCUSED**

**ARON KIPRONO KOECH.....2<sup>ND</sup> ACCUSED**

**RULING**

1. Before me are two applications dated 2/12/2019 for bail in respect of each of the two accused persons herein that is Julius Kipyegon Bii and Aron Kiprono Koech both filed through counsel Tengekyon & Koske Advocates.
2. The applications which were brought by way of Notice of Motion were filed under Article 49 (h) of the Constitution of Kenya 2010 and seek that the accused be admitted to bail pending trial.
3. Both applications were opposed through a replying affidavit sworn by Winny Chelule the mother of the deceased.
4. I noted that pre-bail reports were filed by the Bomet Probation Officer Joel Nyaribo dated 3/12/2019 in respect of each of the two accused persons, the recommendation therein being that each may be released on bail.
5. At the hearing of the applications, Mr. Koske who appeared for both accused persons urged that his clients be released on bail, and relied on the pre-bail reports filed. Counsel added that the affidavit in opposition to the release on bail from the mother of the deceased did not disclose any compelling reasons to deny his clients bail, and merely indicated the likelihood of arrest of other suspects but did not disclose possible interference with witnesses.
6. Mr. Muriithi for the State on the other hand opposed the request for release of the accused on bail and relied on the affidavit filed in opposition to the applications. Counsel stated further that the mother of the deceased was not interviewed by the Probation Officer and that this court was not necessarily bound to go by what was stated by the Probation Officer in the pre-bail reports.
7. Having considered the applications and submissions on both sides, I note that every arrested person has a constitutional right in Kenya to be released on bail/bond provided that there are no compelling reasons for denial of bail. In this regard, Article 49 (i) (h) of the Constitution states as follows:-

*“49 (1) An arrested person has the right-*

*(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”*

8. Thus the right to pre-charge and pre-trial release on bail applies in all cases irrespective of the seriousness of the offence allegedly committed by an accused person.
9. In the present case, the two accused persons have been charged with murder. From the contents of the file, it is apparent that other suspects might be at large and are yet to be arrested, and one of the accused herein Aron Kiprono Koech, the second accused, is said to be a young man aged below 20 years.
10. The State has opposed the grant of bail. The representative of the Director of Public Prosecutions has relied on the affidavit in opposition to bail filed by the mother of the deceased and said that the mother of the deceased was not interviewed by the Probation Officer in compiling the pre-bail reports. I do not think so because the Probation Officer clearly recorded in his report that the family of the deceased

did not want the accused persons to be released on bail.

11. Are there compelling reasons for denial of bail? The State has not demonstrated any compelling reasons to this court. It was their primary duty to do so. I myself, have not found any compelling reasons to deny the accused bail.

12. The opposition to bail of the mother of the deceased is appreciated and understood. She lost her son. However, the accused are presumed innocent until proved guilty. Such opposition is thus not a compelling reason for denial of bail in the circumstances of the present case.

13. I will thus grant the two accused persons bail. In the result, I allow the applications for bail and order as follows-

**1) Each of the two accused persons will be released on signing their bond of Kshs.400,000/- with one surety of similar amount.**

**2) In the alternative, each accused person will be released on payment of cash bail of Kshs.200,000/.**

**3) They will not interfere with prosecution witnesses.**

**4) They will attend court at every mention and hearing of the case until the case is finalized.**

**Dated and delivered at Bomet this 2<sup>nd</sup> day of March 2020.**

**George Dulu**

**JUDGE**