



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO 18 OF 2020**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**DENIS OKWARO KHAPELE.....ACCUSED**

**RULING**

1. The Applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on the night of 5<sup>th</sup> and 6<sup>th</sup> of April 2020 at Economy, Huruma Area in Starehe Sub-County, within Nairobi County murdered **FAITH OUMA OKUKU ALIAS SHARON**.

2. He pleaded not guilty to the charges and in compliance with the provisions of **Article 49 (1) (h)** the court directed the prosecution to file an affidavit if any on compelling reasons, which was done through an affidavit sworn by CYRUS LEKISIMA in which it was stated that the accused and the deceased were living together as husband and wife and on the material night the accused attacked the deceased with a weapon in the presence of their children.

3. It was contended that should the accused be released on bond, there was likelihood of the same interfering with the testimony of the witnesses who were well known to him. It was stated further that the applicant was charged with murder in which one of the penalties on conviction was death sentence and there was therefore more probability and incentives for the accused to abscond if released on bail. It was finally stated that that the applicant had not provided his place of residence and or employment status.

4. In response the applicant filed a replying affidavit and stated that he had cooperated with the police and shall continue to do so, as he personally surrendered himself to the police station soon after the alleged commission of the offense. He stated that there was no evidence tendered by the prosecution to show that he will interfere with witnesses and therefore the contention thereon was only speculation. He stated that his father was willing to stand surety and that his four young children depended upon him as their sole breadwinner

5. He deposed that considering that the country was being ravaged by the pandemic, it was only fair that he be granted bail/bond so as to take care of his young children who were left destitute.

**SUBMISSIONS.**

6. This matter was heard during the COVID 19 pandemic and therefore the court did not have the benefit of the pre-bail report. On behalf of the prosecution Ms. Gikonyo submitted that the key witnesses were known to the accused as they are his children and sister who were living with them, as well as neighbours who were likely to be interfered with by the accused if released on bail. It was submitted that the accused had no fixed abode or gainful status and if released cannot go back to huruma. It was contended that the members of the public were still agitated at the commission of the offense in their area and therefore the accused should be denied bail on account of public order.

7. On behalf of the accused Mr. Mwangale submitted that there was no witness who had stated that the accused will interfere with them. He stated that the accused had fully cooperated with the police and was not likely to interfere with witnesses. It was contended that no compelling reasons were advanced to enable the court deny the accused bail.

**DETERMINATION.**

8. Bail is a constitutional right of every accused person which can only be denied where there are compelling reasons advanced by the prosecution to the satisfaction of the court on a balance of probability under article 49 (1) (h) of the constitution. What constitute compelling

reasons are now stated in the Bail Bond Policy Guidelines and as confirmed through several decisions of the Superior Courts to include;

- (i) The nature of charge.**
- (ii) The strength of the evidence which supports the charge.**
- (iii) The gravity of the punishment in the event of conviction.**
- (iv) The previous criminal record of the accused if any.**
- (v) The probability that the accused may not surrender himself for trial.**
- (vi) The likelihood of the accused interfering with witnesses or that he may suppress any evidence such as incriminating him.**
- (vii) Likelihood of further charges being brought against the accused.**
- (viii) The probability of a finding of guilt.**
- (ix) Detention for the protection of the accused.**
- (x) The necessity to procure a medical or social report pending the disposal of the case.**
- (xi) Accused persons own safety, security and protection – REPUBLIC V KIMUNYA.**
- (xii) If the accused person is likely to pose public danger by being released on bail.**
- (xiii) If by releasing the accused on bail public confidence in the administration of justice will be dismissed.**
- (xiv) The character antecedents, associations and community ties of the accused person.**

9. In this matter the accused and the deceased were living together as husband and wife and the offense allegedly occurred in the presence of their children and a sister of the accused, who are the main prosecution witnesses and given the close relationship between the accused and the intended prosecution witnesses, the likelihood of the same interfering with their testimony or his presence at their home intimidating them cannot be wished away. In this I find support in the decision by Mabeya J in the case of **REPUBLIC v JOYCE KAGENDO [2017] eKLR** where the Judge stated:-

**“5. In the present case, the Court (Hon. Onginjo J) ordered for a pre-bail report to be prepared and filed. That report was prepared and filed in Court on 4<sup>th</sup> December, 2017. The same discloses that the deceased in this case was the husband of the accused; that the eye witnesses are family members of the accused which includes her son. That when the accused was briefly released from police custody, she threatened the son with death. There is fear that if released, she might interfere with the witnesses in this case. Her safety is also not guaranteed.**

**6. To my mind, the close relationship between the accused and the aforesaid eye witnesses makes it more likely that she may interfere with the witnesses as has been alleged. It is alleged that she has done so previously and she may repeat the same.”**

10. I am therefore satisfied that there are adequate compelling reasons to enable me deny the accused his constitutional right to bail at this stage. The accused shall be remanded in custody until all the witnesses who are closely related to him have testified, when he shall be at liberty to renew his application for bond and it is ordered.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JUNE 2020 through Google Teams**

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

Ms Gikonyo for the State

Mr. Mwangale for the accused

Accused person absent – under quarantine

