



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL CASE NO.6 OF 2015

REPUBLICRESPONDENT

V E R S U S

DICKSON GITHINJI NJERU.....ACCUSED

RULING

INTRODUCTION

1. The application before the court is an *ex-parte* **Notice of Motion** dated and filed on the 5th of June 2020 by the Applicant praying for the orders that:

- a. **This application be certified as urgent and heard on a priority basis;**
- b. **The Court be pleased to grant the accused person reasonable bail terms and conditions pending the hearing and determination of the case.**
- c. **That the costs of the application be borne by the applicant.**

2. The application is premised on the grounds that

- a. **The accused person was arrested on 21.03.2015 and was presented to the court wherein he pleaded not guilty.**
- b. **The accused person has a right to be admitted to bail and there are no compelling reasons why he should be denied bail.**
- c. **The accused person has a right to be presumed innocent until the contrary is proved and that the continued detention of the accused person pending trial would be punitive and an infringement on his rights.**

3. The application is supported by the affidavit of the applicant Dickson Githinji Njeru.

THE APPLICATION

4. The application is brought under **Articles 49 and 50(2) of the Constitution** and all other enabling provisions.

5. The accused was charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He was arrested on 21.03.2015 and presented to court to take plea.

6. The accused alleged that the long detainment has caused him mental anguish, anxiety and trauma. He claimed there were no compelling reasons to warrant him not to be released. He prayed for affordable bail terms as his family were peasant farmers.

7. The state responded to the application for bail through a replying affidavit dated 29.07.2020 by the CPL Julius Kosgey, in which he opposed the application on grounds that the accused person may disappear because of the nature of the offence, and because crucial witnesses have not been heard thus the accused was likely to interfere with the witnesses.

8. The matter has been pending before court, as the prosecution sought a plea agreement and reduction of the offence to manslaughter.

ANALYSIS

9. The primary issue which the court has to determine is whether there are compelling reasons to deny the accused person his right to bail. The reasonable bail and bond terms is a constitution right provided in **Article 49 (1) (h)** that states the accused person has a Constitutional right that can only be qualified by compelling reasons.

10. The Bail and Bond policy sets out principles that courts take into consideration they include:

- i. The Presumption of innocence Article 50 (2).**
- ii. Right of liberty unless compelling reasons exist.**
- iii. Right to reasonable bail and bond terms.**
- iv. Balance of right of accused persons and the interest of justice.**
- v. Consideration of victims.**

Section 123 A (1) of the Criminal Procedure Code provides for bail/bond and its exceptions it provides:-

“(1) Subject to Article 49(1) (h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular-

- (a) the nature or seriousness of the offence;*
- (b) the character, antecedents, associations and community ties of the accused person;*
- (c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and*
- (d) the strength of the evidence of his having committed the offence.”*

11. It sets out factors that the court should consider which include:

- (a) the nature or seriousness of the offence;**
- (b) the character, antecedents, associations and community ties of the accused person;**
- (c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail;**
- (d) the strength of the evidence of his having committed the offence;**

The second subsection provides for compelling reasons such as likelihood to abscond and for the protection of the accused person.

In ***Joseph Mutua Kimeu vs Republic Nairobi HC Criminal Revision No. 166(2017) eKLR*** it was held that the onus is on the prosecution to provide evidence of the compelling reasons to deny the accused person bail.

12. **Section 123 of the Criminal Procedure Code** states that bail may be granted at any point of the proceedings. In the present application the investigating officer in his affidavit raised allegations that the accused is likely to abscond because of the nature of the offence and that the accused may likely interfere with witnesses. These are not compelling reasons to deny bail, as the offence is bailable and the court will impose conditions which ensures that he turns up for trial. The accused has been in remand for the past five years as the prosecution discussed plea agreements or reduced charge. My finding is that there are no compelling reasons to deny accused bail. I order that:-

- 1) The accused will be released on bond/bail.**
- 2) He will sign a bond of Kshs 500,000/- plus one like surety.**
- 3) The surety be approved by the Deputy Registrar.**
- 4) The accused to attend court as and when required.**

Dated at Kerugoya this 15th day of September 2020.

L. W. GITARI

JUDGE