



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 67 OF 2019

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

VERSUS

CHARLES NJOGU KAMANDE.....ACCUSED

RULING

The applicant **CHARLES NJOGU KAMANDE** has filed this application dated 17.2.2020 seeking an order that he be released on bail on reasonable terms pending determination of his case. Attached to the application is an affidavit also sworn on 17.2.2020. At the hearing of the application, Mr. Farah for the applicant only made short submissions that 2 witnesses have testified in this case and only expert witnesses remain and so there is no likelihood of interference with witnesses. Counsel pledged that the applicant was ready to abide with any conditions that the court could place.

Ms. Kimani, for the state, opposed the application. She gave the first ground that the applicant has no place of abode neither does he have any gainful employment having only worked as a trolley pusher at Khoja Mosque. He is therefore likely to abscond if released on bail.

It was further argued that the prosecution has produced at least 2 witnesses who have given a strong case against the applicant. That gives the applicant an incentive to abscond.

Lastly, it was argued that the applicant is likely to interfere with the investigations. It was claimed that at least one of his accomplices is still at large.

I have considered the submissions made in favour of the application and in opposing the same. Under Article 49(1)(h) of the constitution;

“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.”

The above provision re-inforces the general legal position that all accused persons have the right to pre-trial bail, irrespective of the charges they are facing. However, the same provision also dictates that the right to bail is not absolute. That the same may be denied where the prosecution has shown the existence of compelling reasons. Generally, these are reasons or factors that are strong enough as to justify the denial of the right of bail. Indeed the consolidated Bail-Bond Policy guidelines mentions some of these factors at paragraph 4.9 to include:

- **Nature of the charge and seriousness of the offence and possible punishment.**
- **Strength of the prosecutions case.**
- **Character and antecedents of the accused**
- **Likelihood of interference with witnesses.**
- **Whether the accused is likely to abscond.**
- **Whether accused is gainfully employed.**
- **Public order, peace or security accused’s own protection.**

In this matter, the prosecution has opposed bail on several grounds:

i. That the prosecution has a strong case against the accused:

There is no doubt that the charge of murder that the accused faces is a serious charge that attracts a similarly strict sentence in case of conviction. The constitution however, gives the right to bail to all accused's irrespective of the charges they are facing. This ground, on its own, can therefore not constitute a compelling reason good enough to justify the denial of bail to the accused.

On the claim that case of the prosecution against the accused is strong and is therefore an incentive for the accused to abscond, it is true this matter has been heard in part and at least 2 witnesses have testified. From the indication of the prosecution, many more witnesses are yet to testify. If this is the position, then it is not possible to conclude at this stage that the case of the prosecution against the accused is very strong and likely to be an incentive to the accused to abscond.

ii. That accused is likely to interfere with the investigations

The reason given herein by the prosecution is that at least one of the accomplices of the accused is still at large. With respect, this submissions is not persuasive. The accused has been charged alone in this matter. And the investigations into the case of accused was completed. The witness statements and the whole committal bundle have all been served on the defence side. The case has even proceeded in part. I therefore do not see how the accused will interfere with the investigations herein.

iii. That accused is likely to abscond

On this ground, the court notes that the primary factor to be considered in grant of bail is whether the accused will if released on bail, turn up in court for his trial. So that if the factors put before the court point to a possibility of the accused absconding never to turn up for his trial, then bail may be justifiable denied. In **Republic Versus Godfrey Madegwa & 6 others (2016)eKLR**, the Hon. Justice Chacha Mwita J. held:

“The primary purpose of bail is to secure the accused person’s attendance to answer the charge at the specific time. The primary consideration before deciding whether or not to grant bail is whether the accused is likely to attend trial.”

I am persuaded by this finding of the Honourable judge. In our instant case, it is on record that the accused has no known place of abode. He is a handcart pusher at Khoja Mosque. His family is not known. His address also remain unknown. This begs the question as to how he would be traced in case he fails to turn up for his trial while on bond. It would indeed be a herculean task to ensure that he presents himself to court. It would be even a harder task to trace him and re-present him before the court. These factors convinces this court that the applicant (Accused) is a flight risk likely to abscond if released on bail never to turn up for trial.

It is therefore the finding of this court, that the prosecution has established at least I compelling reason (ie ground (iii) above) that would justify the denial of bond to the accused. The application of the accused dated 17.2.2020 is accordingly dismissed the accused (applicant) shall remain remanded in custody pending determination of his trial.

HON. JUSTICE D. OGEMBO OGOLA

6th November 2020

Court:

Ruling read out in the presence of Mr. Farah for the accused, Ms. Kimani for the state and the accused (via zoom).

HON. JUSTICE D. OGEMBO OGOLA

6th November 2020