



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 45 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT KIPKORIR RONO.....ACCUSED

RULING

1. The Applicant **ROBERT KIPKORIR RONO** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars of which was that on the night of 30th and 31st August 2018, in Embakasi Sub-county, within Nairobi County murdered **BONIFACE KIPTOO**. He pleaded not guilty to the said charges and by a Notice of Motion dated 14th November 2018 sought to be released on bond/bail pending the hearing and determination of this case.

2. His said application was supported by his affidavit sworn on the same date, in which it was deponed that he had co-operated with the investigating officers since his arrest and shall never interfere with the investigations or witnesses. It was stated further that he was married with four children all who depended upon him as his wife was unemployed. He contended that he was a Kenyan with known fixed abode.

3. The State did not file any affidavit in response and in compliance with the Bail and Bond Policy Guidelines, the court ordered for a Pre-bail report in which it was stated that at the time of the commission of the offence the accused who was described by the Area Administrator as a peaceful person, who related well with village mates, was working with Vitafoam Company. It was stated that upon his arrest his wife relocated to live with the accused person's family as she was unable to care for the children on her own.

4. On the Victim Impact Statement:- It was stated that at the time of his death, the deceased was also working with Vitafoam Company and being the first born of his family though single had assumed leadership role. It was reported that the family of the accused had approached them for forgiveness in line with the Kalenjin customs but they sent them away not to pre-empt the court's process. It was their belief that if released on bond the Applicant would abscond the court process because at the time of crime commission he had been found having discarded the blood stained clothes he had been wearing and on his way out. They stated that two young people who are key witnesses are well known to the Applicant who may scare them off. In conclusion it was stated that the situation at home was still volatile and the deceased's family could revenge against the accused if he were to be released on bond at this point.

SUBMISSIONS

5. On behalf of the State it was submitted that since there were witnesses who were known to the accused who had not testified, the Applicant should not be granted bail. On behalf of the accused Mr. Karoki submitted that there was no evidence that the accused and his family had reached out to the family of the victim. It was stated that the family of the victim did not know where the accused lived and therefore no compelling reason was advanced to enable the court deny the accused bond.

DETERMINATION

6. Bond is now a constitutional right of every accused person under **Article 49 (1) (h)** of the **Constitution** and **Section 123** of the **Criminal Procedure Code** which can only be denied where there exists compelling reasons to be advanced by the Prosecution on a balance of probability, with the sole purpose of bond being to secure the attendance of an accused person at the hearing.

7. The Supreme Court of Canada in the case of **REPUBLIC v ANTIC 2017 SCC 27 [2017] 1 SCR 509** stated that:-

“The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system.

It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons. This right has two aspects:- a person charged with an offence has the right not to be denied bail without just cause and the right to reasonable bail. Under the first aspect, a provision may not deny bail without “just cause” — there is just cause to deny bail only if the denial occurs in a narrow set of circumstances, and the denial is necessary to promote the proper functioning of the bail system and is not undertaken for any purpose extraneous to that system. The second aspect, the right to reasonable bail, relates to the terms of bail, including the quantum of any monetary component and other restrictions that are imposed on the accused for the release period. It protects accused persons from conditions and forms of release that are unreasonable.”

8. What constitutes compelling reasons has now received adequate judicial pronouncement and it will serve no purpose to add my voice thereto save that the same is now covered in **Bail and Bond Policy Guidelines** in a non-exhaustive manner at **Section 4.9** as follows:-

- a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.*
- b) The strength of the prosecution case.*
- c) The character and antecedents of the accused person.*
- d) The failure of the accused person to observe bail or bond terms.*
- e) The likelihood of interfering with witnesses.*
- f) The need to protect the victim or victims of the crime.*
- g) The relationship between the accused person and the potential witnesses.*
- h) The best interest of child offenders.*
- i) Whether the accused person is a flight risk.*
- j) Whether the accused person is gainfully employed.*
- k) Public order, peace and security.*
- l) Protection of the accused persons.*

9. In this cause the only compelling reason advanced through the Pre-bail report is that there is a likelihood of the accused being lynched by the deceased's friends in Nairobi and people back home, leading to a conclusion that the situation at home is still volatile and the deceased family could revenge against the accused person if released on bond. This to my mind does not constitute any compelling reason to enable the court deny the accused the enjoyment of his constitutional right taking into account that it is the duty of the State to provide security to all its citizens including those charged with criminal offences and are released on bond. It is further an obligation on the family of the deceased to maintain law and order and to see to it that the accused have his day in court just as they too expect so on behalf of the victim.

10. Justice H. Omondi put it better than I could in the case of **REPUBLIC v JOSEPH LENTRIX WASWA, Bungoma Cr. Case No. 24/2014** as follows:-

- “a) The Constitution of Kenya has now opened a new chapter for any individual who come into conflict with the law – unlike pre-2010 now all offences are bailable unless there are compelling reasons.*
- b) Consideration of bail should not be used as some form of punishment on the accused person or as a way of appeasing the injured party.”*

11. With the above in mind, I am not persuaded that the prosecution has established compelling reasons to enable the court deny the accused the enjoyment of his constitutional right to bail. This therefore leaves the court with determination as to what constitutes reasonable bond terms. In determining what constitutes reasonable bond terms, the court must take into account the nature of the offence, the Applicant's limited resources, with bond amount imposed not being higher than an amount reasonably likely to ensure the Defendant's presence at the trial.

12. I am therefore persuaded and find that bond on the following terms will be reasonable:-

- a) Bond of Kenya shilling five hundred thousand (Kshs.500,000/-) with one surety of similar amount.*
- b) In the alternative cash bail of Kenya shillings two hundred and fifty thousand (Kshs.250,000/=) with two sureties of similar amount.*
- c) The accused shall not make any contact with any of the intended prosecution witnesses during the period of his trial and shall not interfere with any of them at all.*

It is so ordered.

Dated, delivered and signed at Nairobi this 18th day of June, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Machira for Mr. Karoki for the accused

Accused present

Court Assistant: Karwitha