



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 7 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH OTIENO OCHIENG.....ACCUSED

RULING

1. The accused prays for bail pending trial.
2. There is a supporting affidavit sworn by the accused on 22nd July 2019. He is housed by his parents in Makadara, Nairobi. He deposes that he is a “born-again Christian” and a dancer at his local church. He is unemployed but occasionally performs shows with some gospel artistes.
3. He avers that he will abide by all conditions that may be set for his release. He refutes the allegations by the Republic that he is a flight risk. In particular, he states that on the day he was arrested at Kindu Bay on 16th May 2019, he had merely accompanied his friend, *Rodgers Namukuro* on a trip.
4. His learned counsel, *Mr. Gitonga*, emphasized that the accused has a fixed abode; that he is deemed innocent; and, that bail is a constitutional right. Regarding the allegation that the accused is suicidal learned counsel submitted that the lower court granted the accused bail in *Muranga Chief Magistrates Criminal Case 583 of 2019*. Furthermore, the question of his innocence or guilt in that case has not been determined.
5. The application is strenuously opposed by the Director of Public Prosecutions. The objections are three-pronged: first, that the accused is a flight risk; secondly, that he attempted to commit suicide which is the subject of separate criminal proceedings in *Murang'a Chief Magistrates Criminal Case 583 of 2019*; and, thirdly, that the accused will interfere with witnesses in the murder trial.
6. Learned prosecution counsel, *Ms. Keya*, relied largely on a replying affidavit sworn on 30th August 2019 by *Police Sergeant Kasuni*, the investigating officer.
7. There is also filed a comprehensive *pre-bail report* dated 29th July 2019 by *Ms. Agnes Kamindu*, the County Director of Probation and Aftercare Service.
8. The accused is presumed *innocent*. Under **Article 49 (1) (h)** of the **Constitution**, he is entitled to bail *unless* there are *compelling* circumstances.
9. The overarching objective of bail is to ensure the accused *attends* his trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
10. Other relevant matters to be considered by the court include: the nature of the charge; the likely sentence; previous criminal records, the *views of the family of the victim*, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
11. The accused faces a grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on the night of 13th and 14th May 2019 at Kiharu Estate within Murang'a County the accused killed *Pauline Wangari*.
12. The social report indicates that the deceased was the first born daughter in a family of three. The **Victims Protection Act 2014** requires the views of victim's family to be taken into account at this stage. The parents of the deceased expressed anguish for the loss. They do not know the accused. I appreciate their bitterness and angst.
13. I commiserate with the accused. But there are *three* compelling reasons for denial of bail. Firstly, the accused disappeared from the *locus*

in quo in Murang'a. He was arrested days later in Muhoroni, Kericho County through mobile phone tracking. It may be true that he had been invited to take the trip by his friend, *Rodgers Namukuro*. But the statement by *Namukuro* filed with the *committal bundle* states that the accused tried to sell him a television set in Nairobi which is alleged to have been taken from the house of the deceased. I remain alive that these are mere allegations at this stage.

14. Secondly, on 17th May 2019, the accused was escorted to his residence in Nairobi for further investigations. He then attempted to escape through a balcony but was restrained by the police. It is alleged that he took a knife and stabbed himself in the lower abdomen. The matter is the subject of separate criminal proceedings in *Murang'a Chief Magistrates Criminal Case 583 of 2019*. The less I say about it the better.

15. Thirdly, I find that two of the state witnesses, *Rodgers Namukuro Onyango* and *Mary Amollo* are close associates of the accused. There is a thus a real *likelihood* of interfering with the *witnesses* or evidence in the murder trial.

16. In the end, I find that there are *serious* and *compelling* reasons *not* to release the accused. Bail is *refused*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 13th day September 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Accused.

Mr. Gitonga for the accused.

Mr. Mutinda for the Republic.

Ms. Elizabeth, Court Clerk.