



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 36 OF 2019

REPUBLIC PROSECUTOR

VERSUS

LOYFORD MUNENE APPLICANT

R U L I N G

1. The applicant faces the charge of murder. It alleged that on 18/12/17 at Kianjogu location in Imenti South sub-county, jointly with another not before court, the applicant murdered **Benson Mutugi**. The applicant was first arraigned before Court on 20/5/19 and made an oral application for bail. The same was objected to by the prosecution and for reasons on record, the same was rejected by this Court on 4/7/19.

2. By a Motion on Notice dated 9th July, 2019, the applicant has once again sought to be granted bond. The application is supported by his affidavit wherein he avers that the pre-bail report and the affidavit of **Cpl Kitivo** which the Court relied on to deny him bond was misleading. That the Court was misled to believe that he is a flight risk while all along he has been undertaking a course at Meru Polytechnic.

3. The applicant explained that it was not true that he could not be traced from December 2017 to May 2019 as he was at the time attached to the National Youth Service at Lamu/Yatta. He also avers that he has a fixed abode at Kianjogu location.

4. The application is opposed by the prosecution through a Replying Affidavit sworn by **Gitonga Muriuki**, a Senior Prosecution Counsel, Meru on 29/7/19. He avers that the applicant has deliberately refused to explain his whereabouts between 18/12/17, when the offence was committed and 17/5/19 when he was arrested and charged. That the documents from Meru Polytechnic do not state how the applicant had absented himself from his known place of abode, or whether he was a resident at the subject institution.

5. It is further contended by the prosecution that the letter of the Chief attached to the application is a forgery since the averments made are prejudicial to the trial process and the Area Chief has since denied authoring the same.

6. Mr. Muriuki supported the averments in the earlier affidavit sworn by the investigations officer and the pre-bail report. He reiterated that the applicant is not only a flight risk but was using accomplices to intimidate the prosecution witnesses.

7. That position was supported by the affidavit of **Lawrence Majau** (brother to the deceased) sworn on 17/9/19. He averred that he comes from the same sub-location with the applicant who has been at large since the commission of the offence. That it is only through sheer luck that he was informed by an informer that the accused was a student at Meru National Polytechnic. That the applicant and his family members have been sending text messages to the victims family members urging them to withdraw the charges herein.

8. This is an application for bond pending trial. Bond is a constitutional right that every accused is entitled to unless there are compelling reasons. In **Samuel Mburu Njenga v Republic [2018] eKLR**, the court explained the court's mandate when reviewing bond terms and made reference to the case of **R. v. Nottingham Justices Ex parte Davies[1981] QB 38**, where it was held:-

“The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since the last occasion, but also circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in doing justice to the accused. The question is a little wider that “Has there been a change?” It is “Are there any new considerations which were not before the court when the accused was last remanded in custody?”

9. In this case, the Court had denied the applicant bond on 4/7/19. The Court relied heavily on the pre-bail report dated 2/7/19. The same showed that there were compelling reasons in this case not to grant bond. These were, inter alia, that the applicant had fled his home after the offence was committed and that his whereabouts were unknown.

10. On 5/7/19, **Mr. Ngugi**, Learned Counsel for the applicant appeared before me and applied that the applicant be allowed to sit for his

KNEC examinations slated for that month. Counsel produced documents to show that the applicant was a student at the Meru National Polytechnic and had been in that institution for a year before he was apprehended and arraigned in court.

11. By a ruling delivered on the same date allowing the applicant to be escorted to the Meru National Polytechnic, the Court observed that if that information had been brought to its attention, it would not have denied the applicant bond. Nevertheless, the Court observed that it had been influenced by the Replying Affidavit of CPL Jimmy Kitivo and the pre-bail report both of which the applicant had had no opportunity to comment on.

12. With the present application, the applicant has had an opportunity to consider the allegations levied against him both in the pre-bail report dated 2/7/19 and the affidavit of **Cpl. Jimmy Kivito** sworn on 1/7/19. In those documents, it is alleged that the applicant is a flight risk having disappeared after the offence was committed; that he is likely to interfere with witnesses if released and that there is a threat to his own security.

13. The question is, has the applicant now having had sufficient time and opportunity to address the issues raised in those documents and as adumbrated by **Mr. Gitonga Muriuki** in his Replying Affidavit of 29/7/19?

14. In his supporting affidavit, the applicant has explained that between December, 2017 and May, 2018, he was working with the National Youth Service at Lamu/Yatta. That between May, 2018 and May, 2019, when he was arrested, he had been at the Meru National Polytechnic.

15. Both the affidavits of **Mr. Gitonga and Lawrence Majau Murungi**, the victim's brother, allege that the applicant has avoided going to his home in Kianjogu during the holidays. The applicant did not deny this fact. This Court takes judicial notice that Kianjogu which is within Imenti South sub-county is a few kilometres from Meru National Polytechnic which is situated within Imenti North sub-county.

16. The **Kenya Judiciary's Bail and Bond Policy Guidelines, March 2015** at p. 25 provide, *inter alia*, that:-

“The following procedures should apply to the bail hearing:

The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

i) That the accused person is likely to fail to attend court proceedings; or

ii) That the accused person is likely to commit, or abet the commission of, a serious offence; or

iii) That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or

iv) That the accused person is likely to endanger the safety of victims, individuals or the public; or

v) That the accused person is likely to interfere with witnesses or evidence; or

vi) That the accused person is likely to endanger national security; or

vii) That it is in the public interest to detain the accused person in Custody.”

17. The prosecution has alleged that the applicant disappeared after the offence was committed and remained at large for close to 2 years without going to his place of abode at Kianjogu. It was further alleged that the applicant and his family members have been sending text messages to the victim's family members urging them to withdraw the charges facing the applicant. There is also the allegation that the brother of the applicant, who is also a suspect in this case, has remained at large.

18. In **Republic v Joktan Manyende & others [2012] eKLR**, Gikonyo, J. held:-

“All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”

19. In the present case, the prosecution's allegations of the possible interference with the witnesses was neither denied nor challenged. There is a familial relationship between the accused and the witnesses. There is a witness statement produced to that effect. The calling of the members of the victim's family also points to direct interference of the witnesses.

20. Despite giving the applicant leave to respond to the statements made by Gitonga Muriuki in his affidavit, he chose not to. In this regard, I find that the prosecution has established the likelihood of the applicant interfering with its witnesses. Further, the failure to explain the

avoidance of his usual place of abode since December, 2017 until May, 2019 points towards the likelihood of being a flight risk.

19. One other thing, the pre-bail report alluded to the possibility of the applicant being harmed if released. The applicant did not dispute this fact.

20. In view of the foregoing, I am satisfied that there exists compelling reasons to deny the applicant bond. Accordingly, the application is dismissed.

DATED and DELIVERED at Meru this 17th day of October, 2019.

A. MABEYA

JUDGE