

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 28 OF 2018

REPUBLICPROSECUTOR

VERSUS

BENARD CHEPKWONY..... ACCUSED

RULING

1. This is an application for bail pending trial dated 25th March 2019 filed by M/s Tengekyon & Koske Co. Advocates brought under Article 49(1) (h) of the Constitution.

2. In response to the application, the State filed an affidavit sworn on 23rd May 2019 by PC Abdi Ali the investigating officer in which it was deponed that there still exists hostility to the accused and the deceased family, and that in the interests of his safety, he should remain in remand. Additionally, it was deponed that the home of the accused was not known and that as such he would not be traced easily in case he absconded.

3. This court ordered the filing of a pre-bail report, which was filed by Ezekiel Lagat Probation Officer Bomet and dated 01/10/2019. In the report, it was stated that both the father of the accused Johnstone Koskei Maritim and mother Lily Koskei were alive, and that the accused had living siblings, and that the parents owned two (2) acres of tea in the family's three (3) acres land. It was also stated that the deceased's family still felt that the accused remains in custody.

4. The pre-bail also report indicated that the home of the accused was Konoin Sub-County while the deceased's home was Longisa which was far away and that reconciliation and cleansing had already commenced.

5. Article 49(1) (h) Constitution confers on all persons held in custody in Kenya the right to be released on bail on reasonable terms, unless there were compelling reasons for denial of bail. The State through the Prosecuting Counsel has informed the court through the affidavit of the investigating officer PC Abdi Ali that the family of the deceased still wanted the accused to remain in custody, they are hostile. The State also said that the accused had no fixed abode, and was thus a flight risk.

6. The Probation Officer in the pre-bail report said similarly that the family of the deceased did not want the accused released on bail, but that there was no report of a criminal life by the accused. The report also stated that the two parents of the accused were alive, and that they had 3 acres of land with tea on 2 acres and that the accused had living siblings both male and female. The Probation Officer concluded by stating that bail may be considered.

7. Having considered all the circumstances of the case herein, and the reports filed, as well as the submissions of counsel for the accused and the Prosecuting Counsel, I note that there was no indication that the accused had a fixed abode but his father and mother indicated willingness to provide surety for him. The distance between the home of the accused family and deceased's family is far apart. In those circumstances, I find no compelling reason for this court to deny the accused bail.

8. I thus grant bail to the accused on the following terms:-

1. The accused will be released on signing his own bond of 200,000/= with one surety of similar amount.

2. In the alternative, he may be released on payment of cash bail of Kshs. 400,000/=

3. He will not interfere with State witnesses.

4. He will attend court at every mention and hearing of the case until it is finalized

5. As I have not fixed a hearing date, I will thereafter give directions on hearing of the case, as I understand that the court diary for the year might be full by now.

Dated and delivered at Bomet this 3rd October, 2019.

GEORGE DULU

JUDGE