



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 29 OF 2019

REPUBLIC

Vs.

LTANGOI LENEMITA alias WILLY SAMSON LESINGIRA

SIKITAAT LEPARMORIJO alias LENTOOK

PETER ITIRAN LEKOLUA

LOCHUKU LEKEPEI

RULING

Bail

[1] Under article 49(1) (h) of the Constitution, every accused person has a right to be released on bond on reasonable conditions except where there are compelling reasons not to be so released. See the article below: -

49. An arrested person has a right: -

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

[2] The Investigations Officer CPL. MOHAMED HASSAN filed an affidavit sworn on 6th May 2019 explaining inter alia the circumstances of the commission of the crime, the difficulties encountered in the tracing and arrest of the accused persons. He stated that the accused are nomads with no fixed abode. He also averred that after the commission of the crime herein the accused and other accomplices went at large only to be arrested after extreme difficulties and expense. According to him, after the arrest of the 2nd Accused person they visited his Manyatta for a search but found the home had been deserted and the whereabouts of the other members of the family was and is still unknown.

[3] The said IO stated further that the 1st accused person is a known convict in Maralal CRC NO 915 and 1053 of 2015. He stated that the circumstances of his release from prison is still unclear as he had been convicted to serve 10 years' jail term in the latter case. The IO made a stunning averment at paragraph 10 that IP Maingi of Isiolo GK Prison who led the search team to Oldonyo and a crucial witness went missing on 26th November 2015, i.e. three months after the commission of this crime, and have not been seen again.

[4] His overall conclusion is that the accused are likely to interfere with crucial witnesses herein as well as investigations which is still going on in order to arrest the other accomplices. He made more averments; that only the clothes and body tissues of the deceased were found. The body is yet to be found and they are still looking for it. He therefore, asked the court not to release them on bond.

[5] The legal counsel for 2nd to 5th accused persons filed a Replying Affidavit. His major arguments were that there is no evidence that the accused will interfere with witnesses or that there are investigations to apprehend other suspects. He stated further that most witnesses in this case are police officers who cannot be intimidated by the accused. And finally, that there is no evidence that the accused will abscond. He concluded that there is no compelling reason to deny the accused bail or bond. All the other counsels adopted these averments by Mr. Lekoona.

[6] The prosecution bears the burden of proving existence of compelling reasons in the context of article 49(1) (h) of the Constitution. The

prosecution must show reason which brings conviction upon the court that the accused should not be released on bond. Such reasons would include; interference with witnesses, evidence or investigations; and likelihood of absconding or flight-risk. The prosecution has alleged that the accused are likely to interfere with witnesses, evidence and investigations, and are likely to abscond. The information laid in the affidavit filed by the I.O is that investigations are still going on in order to arrest more suspect involved in the commission of this crime. According to him the accused and others not before court deal in illegal trade in game trophies specifically killing elephants for ivory in Samburu National Park and other conservancies. Their investigations revealed that the deceased was killed in illegal deal went-sour situation. He made a stunning averment that an officer of prison and a witness went missing after leading the search team herein. Notably, operators of the kind of illegal undertaking described by the I O are dangerous, of necessity discreet and always strive to remain undercover to avoid detection by the authorities. I also note that the accused do not have a fixed abode and locating them after release is problematic. Evidence availed show that the Manyata particularly of the 2nd accused was deserted and family members went at large. There is nothing to suggest that the information by the I O is not true. I find the information to be cogent and credible. Accordingly, I am convinced that the accused may abscond and their attendance in court may not be guaranteed.

[7] In addition, the information provided show that there are other people involved in the commission of this crime and investigations are on-going to have them arrested. There is high possibility that the accused may thwart or interfere with investigation and witnesses. I also note that the body of the deceased is also being looked for and in the circumstances of this case, recovery of the body may not be the wish of any accused person facing charges of murder of such victim whose body is yet to be found. Possibility of interfering with evidence is also high in this case.

[8] In the upshot I find that the prosecution has established that there are compelling reasons not to release any of the accused on bond. According, I deny all the accused persons bond. They shall remain in custody until this case is heard and finalized. However, I order that the case be fast-tracked.

Dated signed and delivered at Meru in open court this 21st day of November, 2019

F. GIKONYO

JUDGE

IN PRESENCE OF

Igweta for 4th accused

Lekona for the other accused person

Maina for state

F. GIKONYO

JUDGE