



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO. 5 OF 2018**

**REPUBLIC ..... DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**SAMUEL OMUKUBA OYOMBERA .....ACCUSED**

**RULING**

1. The accused are charged with murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya. He pleaded not guilty to the charge. He was first produced in court on 6<sup>th</sup> February 2018 and plea was taken on 27<sup>th</sup> February 2018. A bail application was made, whereupon the court called for a pre-bail report.

2. A pre-bail report has been placed on record, dated 13<sup>th</sup> June 2018. It is not favourable to the accused. It is stated that the families of the accused and the deceased are immediate neighbours. The deceased may have died of a land feud between them. The home and land of the accused's family is deserted, as he is the sole surviving member of that family, the rest having all died, and upon his arrest, his wife leased out the property and relocated to her parents.

3. It is common ground that pre-trial bail is a constitutional right for all offences. That right can only be curtailed where the prosecution presents compelling reasons. When the issue was raised on 28<sup>th</sup> October 2019, the state, through Ms. Omondi, objected, saying that the pre-bail report was unfavourable to the accused. The objection was, however, not strenuous as she also indicated that the state was particularly opposed to release on cash bail, and called for stringent terms with respect to bond.

4. Bail would be denied where the accused person is a flight risk, such as where he has no fixed abode, or the circumstances are such that there would be a motive or enticement to flee, or he is likely to interfere with witnesses. None of those issues have been raised by the prosecution. The primary concern is that which is stated in the pre-bail report, that the home of the accused neighbours that of the deceased. That suggests there could be a chance of conflict between their families causing more problems to law and order in the area. Such concerns can, however, be addressed by the stringent conditions that have been called for by the state.

5. I am not persuaded that the prosecution has established compelling reasons for me to deny the accused bail pending trial. I am, however, alive to the issues raised in the pre-bail report.

6. In the end I shall make the following final orders:

**(a) That I hereby admit the accused person herein to bail and he shall be realised from remand custody upon executing a bond of Kshs. 350, 000.00, with a surety of like amount;**

**(b) That as a condition to that release, the accused person shall stay away from his or his father's home at Mulwanda, Khwisero, and shall, during the entire duration of the trial, stay away from and not visit that home;**

**(c) That in addition, he shall not interfere with nor contact any of the prosecution witnesses, and shall attend court at all times when the matter shall be due for mention or hearing or as may be ordered or directed by the court; and**

**(d) That the bond herein shall be liable to cancellation should the accused person breach or violate any of its terms set out above.**

7. It is so ordered.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 11<sup>TH</sup> DAY OF DECEMBER, 2019**

**W. MUSYOKA**

**JUDGE**