



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 23 OF 2018

REPUBLIC.....PROSECUTION

-VERSUS-

DENNIS KIPSANG NGENO.....1ST ACCUSED

GILBERT KIPLANGAT NGENO.....2ND ACCUSED

RULING

1. The two accused persons stands charged with two counts of murder allegedly committed on the same date 8th September 2018.
2. The case is part heard, and counsel for the accused Mr. Mugumya on 30th September 2019 made an oral application for bail. The Principal Prosecution Counsel Mr. Murithi in response left the request for bail to the court to determine at its discretion.
3. This court then ordered the Probation Officer Bomet to file a pre-bail report. Though no pre-bail report was filed consequent upon the above court order, I note that pre bail reports in respect of the accused persons were filed earlier on 4th December 2018 signed by Ezekiel Lagat. Both reports recommend release of the accused persons on bail.
4. An affidavit on bail sworn by PC Tirus Gitonga, the investigating officer of the case was also filed earlier on 20th November 2018. It raised issues such as the accused not having a permanent residence and that the underlying land dispute had not been resolved; and finally that most prosecution witnesses were family members, and the given accused was neighbour. The affidavit concludes by stating that these compelling reasons needed to be catered for before bail could be considered in respect of the accused persons.
5. Under Article 49(1)(h) of the constitution of Kenya 2010 every arrested person is entitled to be released on bail/bond unless there exist compelling reason to justify the denial of the same.
6. The affidavit of the investigating officer raises certain issues to be addressed before consideration of released of the accused persons on bail.
7. Right now five (5) prosecution witnesses have already testified which had changed the position with regard to possibility of interference with witnesses merely being a neighbour does not make a difference. In my view also the land dispute might not be resolved while the accused persons are in custody. With regard to the accused not having a permanent residence, I note that those who will be sureties will cater for attendance of accused persons in court, and in any case there is no suggestion that the accused persons will leave the jurisdiction of this court.
8. The above aside, the Probation Officer's report filed recommends release of the accused persons on bail, and the Principal Prosecuting Counsel has no objection to release of the accused on bail.
9. I find no compelling reasons that would justify refusal by this court to release any of the two accused person on bail.
10. I thus allow the request for bail and order as follows:-

1. Each of the two accused persons will be released on signing a bond of Kshs.400,000/= with one surety of similar amount.

2. In the alternative each will be released on payment of cash bail of Kshs.200,000/-.

3. The accused will not interfere with prosecution witnesses.

4. The accused will attend all mentions of the case and hearing thereof up to finalization of the case.

DATED AND DELIVERED AT BOMET THIS 5TH DECEMBER 2019.

GEORGE DULU

JUDGE