



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MURDER CASE NO. 11 OF 2018

REPUBLICPROSECUTOR

-VERSUS-

JOSEPH MUCHIRA MUGO.....ACCUSED

RULING

The application pending before court is dated 31st July 2018 seeking release on bail pending trial of the accused person. The accused was charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code.**

He was arrested and presented before court on 26/07/2018 where he pleaded not guilty to the offence. He stated that the matter has been ongoing since 2016 as against his two co-accused persons Christopher Kiura Mugo and Nicholas Karani Kibiru. That he has never interfered with the witnesses or investigations and does not have such intentions. That the said co-accused persons were released on bond of Kshs 1 Million with a surety of similar amount. If granted bond, he ensures that he would attend court each and every time he is required to do so.

The prosecution did not oppose the said application.

Bail is a Constitutional right and an accused person should be allowed to enjoy the right unless there are compelling reasons to deny the bail. **Article 49(1)(h) of the Constitution** provides:

“An arrested person has the right.

To be released on bond or bail on reasonable conditions pending a charge or trials, unless there are compelling reasons not to be released.”

The **Constitution** is therefore the law applicable. Depending on matters which maybe raised by the prosecution while opposing bail, the court exercise discretion to decide whether the accused will be released on bail or not. It is the responsibility of the prosecution to lay such matters before the court for it to determine whether they are compelling or not. Bail therefore is not an absolute right because it can be denied if court finds that there are compelling reasons not to grant the accused bail.

In Republic –v- Stephen Robi Marwa & Another (2014) eKLR

The court in dismissing the application for bail pending trial in a murder case stated;

In the case of Republic –vs- David Nyasora Nyamongo – Criminal Case No. 90 of 2010 (unreported) in the High Court sitting at Kisii, Makhandia J (as he then was) stated:

“At the end of the day however whether or not an accused should be admitted to bail, is largely a matter of discretion of the court to be exercised in terms of the constitution, the law applicable, taking into account the gravity of the offence, the risk of absconding, the risk of influencing witnesses, the overriding consideration of granting bail which is whether the accused will turn up for the hearing of his case once granted bail. Again, the court must bear in mind the other principal purpose for the granting of bail which is to reinforce the cardinal principle of criminal law that an accused is presumed innocent until the contrary is proved. Therefore unless there are compelling reasons for not doing so pending such trial, the accused ought to be released on bail.”

The issue in this application then is whether there are compelling reasons why the applicants should not be released on bail and if so, what are those compelling reasons and who carries the burden of satisfying the court with regard to the existence of such reasons.

In the case of ***Republic –vs- Danson Ngunya & Another (2010) eKLR***, the court adopting the reasoning in the ***M. Lunguzi –vs- Republic CMSCA Appeal No. 4 of 1995*** the learned Judge stated:

***“In my Judgment the practice should rather be to require the state to prove to the satisfaction of the court that in the circumstances of the case, the interest of justice requires the accused be deprived of his right to be released from detention. The burden should be on the state and not on the accused. He who alleges must prove. That is what we have always upheld in our courts. If the state wants the accused to be detained pending his trial then it is up to the state to prove when the court should make such an order*”**

“I entirely agree with the above propositions and hold that it is the duty of the state to satisfy me as to the compelling reasons why the applicants herein should not be released on bail/bond pending trial”.

Since the prosecution did not provide any compelling reasons to deny the accused bail pending trial I find no reason why he should not be granted bail. I therefore order as follows:

- 1) The accused person shall be released on bail/bond pending the hearing and determination of the case.
- 2) He shall be released on a bond of Kshs 1,000,000/- plus one like surety.
- 3) The Deputy Registrar to examine the sureties and make appropriate orders.

Dated at Kerugoya this 11th Day of October 2018.

L. W. GITARI

JUDGE