

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO 7 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ANTHONY KIPLANGAT.....ACCUSED

5TH RULING ON BAIL

1. By a ruling dated and delivered on 11/10/2016 the court (Kasango, J) declined to admit the Accused herein to bail upon the ground that “...the bitterness held by the community is too high to risk...”.
2. By a second ruling dated and delivered on 04/04/2017, the court (Kasango, J) again declined to admit the accused to bail upon the same ground, and also upon the additional ground that there was likelihood of interference with witnesses by him.
3. There was a third ruling on bail dated and delivered on 04/01/2017 by which the court (Kasango, J) yet again declined to admit the Accused to bail upon the same two grounds.
4. The Accused would not tire of seeking his constitutional right to be admitted to bail pending conclusion of his trial for murder. By a fourth ruling dated and delivered on 13/12/2017 the court (Kasango, J), for the fourth time, declined to admit him to bail upon the same two grounds, and an additional one, that “...the accused had not demonstrated that he will not abscond his trial, which is now at its tail end, if granted bail”.
5. This present ruling concerns the Accused’s fifth attempt to be admitted to bail pending conclusion of his trial. This was by the notice of motion dated 02/06/2018. In presenting the application the Accused’s learned counsel pointed out that all civilian prosecution witnesses had testified and that the only remaining witnesses are the Government Analyst and the investigating officer. There was thus no danger of the Accused interfering with the remaining witnesses.
6. Regarding the allegation that the Accused’s life would be in danger from the community should he be admitted to bail, learned counsel pointed out that his home is at Narok (where he would go) and not in Nanyuki Town where the alleged offence was committed.
7. PW1 having been recalled to testify afresh at the demand of the Accused under section 200(3) of the **Criminal Procedure Code**, and him having fully testified, it appeared that the prosecution no longer had any objection to him being released on bail.
8. Bail pending trial is now a constitutional right that will be denied only for compelling reason; and any condition that the court might impose for such bail, against by constitutional edict, must be reasonable. See **Article 49(1) (h)** of the **Constitution of Kenya, 2010**.
9. Whether or not there is compelling reason sufficient to deny an accused his constitutional right to bail is really a matter of evidence, ordinarily to be presented by the prosecution, and upon which the court must pass appropriate judgment. That is not to say that the court may not find compelling reasons in other material that may be placed before it, for instance, the witness statements and other documents ordinarily provided to the accused and to the court by the prosecution. The circumstances of the case, as disclosed by such material, for instance the relationships between the accused, deceased, witnesses, and the ages of witnesses, etc., might in the judgment of the court, amount to compelling reason to deny the accused bail.
10. Having said that, however, it can never be the burden of the accused to provide the justification for enjoyment of his constitutional right. It must always be the burden of the prosecution, to be discharged on balance, to demonstrate compelling reason to deny the accused his constitutional right to bail pending trial.
11. In the present case, the Accused has been in custody since early March 2016. If there was compelling reason before to deny him bail, such reason no longer exists; at any rate, I do not find any established by evidence on a balance or probabilities.
12. I will in the circumstances admit the Accused to bail. He may be released upon his own cognisance in the sum of KShs 1 million plus one surety in like sum. Alternatively, he may be released upon a cash bail deposit of KShs 500,000/00. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 21ST DAY OF NOVEMBER 2018

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 22ND DAY OF NOVEMBER 2018