



**REPUBLIC OF KENYA**

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

**Criminal Case No. 36 Of 2016**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**DERRICK INJORI INAMWENDI ..... ACCUSED**

**RULING**

1. The accused *Derrick Injori Inawendi* is charged with the offence of Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. He denied the charges. On 25<sup>th</sup> May, 2016 through his learned counsel *Mr. Omboto*, he sought to be admitted to bond pending his trial.
2. The state through learned prosecuting counsel *Ms. Oduor* applied for the filing of a pre-bail report to assist the court in determining the application. A pre-bail report was subsequently filed on 11<sup>th</sup> July, 2016.
3. In an affidavit titled “further replying affidavit,” the investigating officer in this case *Cpl John Imbayi* objected to the accused’s release on bond. He deposed that he had information from the deceased’s sister *Gladys Chebet Lelei* that she was apprehensive that if granted bond, the accused would harm her; that strange people had approached her and asked her why she was pursuing the case. He advised her to report the matter to the police. He therefore concluded that if granted bond, the accused was likely to interfere with witnesses given that *Gladys* was one of the prosecution witnesses.
4. To counter those depositions, the accused swore an affidavit dated 3<sup>rd</sup> February, 2017 in which he deposed that he had a constitutional right to be admitted to bond pending trial; that the further replying affidavit was sworn in bad faith and was tainted with malafides; that he was willing to abide by any conditions the court may impose as terms of his release on bond. In a nutshell, he denied all the averments in the affidavit sworn by the investigating officer.
5. At the hearing of the application, learned counsel *Mr. Omboto* submitted that the state has failed to demonstrate compelling reasons to justify denial of bond to the accused. He asserted that the accused was not a flight risk and if released, he will not interfere with witnesses.
6. Learned prosecuting counsel *Ms Oduor* opposed the application. She urged the court to take into account that the deceased’s sister had expressed fear that if granted bond, the accused was likely to harm her as several attempts had been made to reach her and her Aunt Alice. She urged me not to grant the accused bond until Gladys testified.
7. I have considered the application; the pre-bail report, the affidavits sworn in this matter and the rival submissions made on behalf of the accused and the state.

The primary consideration in deciding whether or not to grant bond pending trial is whether the accused was going to abscond and fail to attend his trial as and when required. However, the court must also take into account several other factors including the nature of the charge; the likely sentence on conviction; the possibility of interference with witnesses and the safety of the accused upon release.

8. The accused in this case faces the grave charge of murder; but he is still deemed to be innocent until proved guilty. He is entitled to protection of the law and under *Article 49 (1) (h)* of the *Constitution*, the accused is entitled to bond pending trial irrespective of the nature of the offence charged subject only to the existence of compelling reasons. And the onus of proving the existence of compelling reasons falls on the state. See: *Republic V Daniel Musyoka Muasya & others High Court (Mombasa) Criminal case 42 of 2500 (2010) eKIR. Republic V Danson Mgunya & Another (2010) eKLR.*

9. The state has opposed the admission of the accused to bond mainly on grounds that if released, he was likely to harm and/or interfere with the deceased's sister one *Gladys* who is a prosecution witness. This allegation has been denied by the accused on oath. The investigating officer did not annex to his affidavit any prove of the alleged threats made on *Gladys* despite his claim that he had advised her to report the matter to the police.

10. It is important to note that the depositions in the further replying affidavit were based on information received from *Gladys*. They were not based on the investigating officer's personal knowledge. The depositions amount to unsubstantiated allegations which are in the realm of hearsay.

11. I have considered the pre-bail report. It is not unfavorable to the accused person per se since the author only expressed the view that if granted bond, the accused is unlikely to raise sureties and that the deceased's family is bitter towards the accused following the untimely death of the deceased. That may very well be the case but an accused person is presumed innocent until proven guilty. The deceased family's bitterness which is obviously grounded on the belief that the accused committed the offence as charged cannot of itself be a ground to deny the accused person his constitutional right to bail pending trial.

12. The claim that the accused may not secure sureties if granted bond is neither here nor there since it only relates to bond terms and not whether or not the accused should be admitted to bail. Besides, it should not be the concern of this court whether the accused will be able to raise sureties or not. The court's duty ends at deciding whether or not to grant bond and setting bond terms if bond is granted.

13. In view of the foregoing, I am satisfied that the prosecution has failed to prove that compelling reasons exist in this case to warrant denial of the accused person's exercise of his constitutional right to bond pending trial. I therefore find merit in the application which I allow in the following terms;

The accused shall be released upon executing a personal bond of Ksh 500,000 together with one surety of a similar amount.

The surety shall be approved by the Deputy Registrar of this court. Once released, the accused shall attend mentions before the Deputy Registrar

once every three months until the case is determined or other orders are

issued by this court.

Orders accordingly.

**C.W GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 15<sup>th</sup> day of February, 2017**

In the presence of:

The Accused,

Mr. Mwaura for the State

Mr. Lobolia Court Clerk

No appearance for Mr. Omboto for the Accused