



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 22 OF 2017

REPUBLIC:::PROSECUTOR

VERSUS

DAVID GITUMA KAITHAMA:::::::::::::::::1ST ACCUSED

JAMES EKARAN LONYAMAN:::::::::::::2ND ACCUSED

RULING

This matter now come up for the application by the 2 accuseds for bail pending trial. The state has opposed this application on the following grounds. First, that there is still hostility where the incident took place and both accuseds would be at risks if released. Second, that accused have threatened at least 1 prosecution witness Alexander Kituyi. Counsel proposed that this application be renewed later after the testimony of the said witness.

On his part, counsel for the accuseds submitted that it has not been shown that the accuseds are a flight risk. Also, that the fact that the probation officer did not get the views of the victims ought to be interpreted in favour of the accused. He also submitted that there is no evidence to prove either that accuseds had attempted to escape or that they have threatened any witness. Finally, that if released, accuseds would not go back to the same place but exercise their options to relocate.

I have considered the submissions of both learned counsel. I have also perused and considered the affidavit of Cpl. James Songok and also the probation officer's reports on this matter.

Under Article 49(1)(h) of the Constitution of Kenya an accused person (an arrested) person has a right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. In this particular case, bond has been opposed on the following grounds: -

- That accuseds are a flight risk with no fixed places of abode.
- That accuseds have previously attempted to escape.
- That accuseds have threatened at least 1 prosecution witness.

On the first ground of objection I have noted that the prosecution side did not endeavor to show how the accused are a flight risk. In any case, the pre-bail reports filed clearly show that their places of abode i.e. homes are well known. Even their siblings are well known. This to me, cannot be a compelling reason for denying the accused's bond. Similarly, no effort was placed on showing or indicating how or when or under what circumstances the accuseds attempted to escape. Being a mere allegation, I am not convinced that this would be a good ground for denying of bond.

Regarding the 3rd ground on threats to witnesses, this indeed is a serious allegation. The name of at least 1 witness has been mentioned. This witness is yet to give evidence. It would be an act of subversion of justice should accuseds be released on bond only for them to engage in acts that would prevent the witnesses (witness) from testifying in court. The court ought not allow this. It is for this reason that I agree with counsel for the state that it would be fair in the circumstances to deny the accused's bond at this stage of the proceedings, to at least after the named witness (Alexander) has given evidence. I so order that accuseds do remain in custody for the moment till this witness gives evidence. The accuseds are free to later renew their application for bond.

DATED, SIGNED and DELIVERED at ELDORET, this 11th day of July, 2017.

D.O. OGEMBO

JUDGE

Ruling read out in open court in presence of: -

1. *Ms. Rakana for the State,*
2. *Mr. Miyienda for the Accuseds and*
3. *Ms. Kibichy for Omboto watch brief for family of the deceased.*

D.O. OGEMBO

JUDGE