



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 49 OF 2016

REPUBLICPROSECUTOR

V E R S U S

MICHAEL KIMUTAI MAIYOACCUSED

RULING

1. The accused *Michael Kimutai Maiyo* is charged with the offence of Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. It is alleged that on the 2nd day of July, 2016 at Tiloi village Kipkabus location in Eldoret East Sub County within Uasin Gishu County, he murdered *Rose Jelagat*.

2. On 21st July, 2016 the accused took plea and denied the charges. On the same date, his advocate, learned counsel *Ms. Miyienda* made an oral application requesting that he be admitted to bond pending his trial.

3. The application is contested by the state. Learned prosecuting counsel *Ms Oduor* relying on a pre-bail report filed in court on 5th September, 2016 urged the court to reject the application on grounds that if granted bond, the accused was likely to interfere with the prosecution witnesses.

4. In his response, *Mr. Miyienda* contended that interference of witnesses was not a compelling reason to justify denial of bail under *Article 49 (1) (h) of the Constitution* as the court could impose a condition to the grant of bond prohibiting the accused from interfering with witnesses.

5. I have considered the application, the pre bail report and the rival submissions made on behalf of the state and the accused person.

Under *Article 49(1) (h) of the Constitution*, an accused person irrespective of the gravity of the offence charged has a constitutional right to be admitted to bail or bond pending trial subject only to the existence of compelling reasons. The onus to establish the existence of compelling reasons why bond should not be granted lies on the shoulders of the state. See – ***Republic V Daniel Musyoka Muasya (2010) eKLR; Danson Mgunya & Another (2010) eKLR.***

6. In this case, the state has opposed the application solely on the ground that if admitted to bail, the accused is likely to interfere with prosecution witnesses. I disagree with *Mr. Miyienda's* submission that the likelihood of an accused person interfering with witnesses is not a compelling reason to justify denial of bond pending trial. In my view, where the state has established that it has reasonable grounds to believe that if granted bond an accused person was likely to interfere with prosecution witnesses, this may

very well constitute a compelling reason to justify denial of bond given that interference of witnesses is a serious matter that has the potential of undermining the criminal justice system. However, each case must be decided on its own merit.

7. In this case, the prosecution has only made a general claim that the accused if released was likely to interfere with witnesses. The state has not placed before the court any evidence to substantiate this claim. It is important to note that the state did not file any replying affidavit to disclose for example the names of the witnesses who were likely to be interfered with or their relationship with the accused. The court is the custodian of the constitution and it is duty bound to safeguard the constitutional rights of all citizens including accused persons. It cannot be expected to deny an accused person his constitutional right to bond pending trial on allegations which are not backed by any evidence or which are not shown to have any foundation.

8. In view of the foregoing, it is my finding that the prosecution has failed to demonstrate that there is a compelling reason to justify denial of bond to the accused person in this case. In the premises, the accused is entitled to enjoy his liberty while awaiting the conclusion of his trial.

9. In the result, I find merit in the application and it is hereby allowed.

The accused shall be admitted to bond on the following terms;

He shall be released upon executing a personal bond of Kshs.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 heard and determined or further orders are made by this court.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 9th day of November, 2016

In the presence of:-

The accused

Mr.Miyienda for the accused

Ms. Oduor for the state

Ms. Naomi Chonde court clerk