



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**HIGH COURT CRIMINAL CASE NO. 77 OF 2014**

REPUBLIC .....PROSECUTOR

VERSUS

MUSA KIPYEGO TOO ..... 1<sup>ST</sup> ACCUSED

SIMON KIPTANUI TOO ..... 2<sup>ND</sup> ACCUSED

**RULING**

1. The two accused persons **Musa Kipyego Too and Simon Kiptanui Too** are jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

It is alleged that on 11<sup>th</sup> day of November, 2014 at Soi Mining village, Kaimosi sub location, they jointly murdered **Luka Tabia Soita**.

2. On 18<sup>th</sup> December 2014, **Mr. Miyienda**, learned counsel for the 2<sup>nd</sup> accused who was also holding brief for **Mr. Chepkwony** for the 1<sup>st</sup> accused made an oral application seeking that both accused persons be admitted to bond/bail pending their trial.
3. The application was contested by the state through learned prosecuting counsel **Mr. Mulati**. He relied on the Replying affidavit sworn on 9<sup>th</sup> December, 2014 by Chief Inspector **Mutune Mukeru**, the Investigating officer in this case.

From **Mr. Mulati's** submissions, it is clear that the state's opposition to the application is grounded mainly on the fact that one of its witnesses is a minor aged 9 years who is also the accused person's neighbour. There is also another witness lined up to testify against them who is their sister in law. The state expressed its apprehension that if released on bond, the accused persons are likely to interfere with these two witnesses thus circumventing the course of justice.

4. I have carefully considered the rival submissions made by both counsel for the accused persons and the state. I find that though under the new constitutional dispensation all accused persons have a right to bail pending trial irrespective of the nature of the offence charged, that right is not absolute and may be denied where compelling reasons exist.

It is trite law that the onus of demonstrating the existence of such compelling reasons rests with the state.

The constitution does not however define what constitutes compelling reasons. The court is tasked with the responsibility of determining what amounts to compelling reasons depending on the

circumstances of each case.

5. As stated earlier, the state is apprehensive that if released on bail, the accused persons who are said to be brothers will interfere with two of its witnesses one of whom is a child of tender years.

To assist me reach a fair determination in this application, I called for the filing of a pre-bail report to furnish the court with more information regarding the relationship of the accused persons and the deceased as well as the witnesses mentioned in the Replying Affidavit.

6. The Pre- bail report filed on 3<sup>rd</sup> February, 2015 confirms that the accused persons come from the same locality with the deceased and the minor who is supposed to testify against them in this case. It is not disputed that another proposed witness in this case is the accused's sister in law.
7. In the circumstances, I find that the likelihood of the accused persons interfering with the said witnesses if granted bond is real. The probability that an accused person may interfere with potential witnesses if proven to exist is a matter that this court must take seriously because if it were to happen, it would definitely have an adverse effect on the course of justice. This probability is far much higher where the proposed witnesses are vulnerable people like minors or persons having a close relationship with an accused person.
8. In view of the foregoing, I am satisfied that the state's apprehension that the accused persons might interfere with witnesses if admitted to bond is justified. And in my opinion, this amounts to a compelling reason to warrant denial of the accused persons' right to bail/bond at this stage.

I therefore decline to admit the accused persons to bond pending trial for now. I however direct that once the minor and the accused person's relative have testified, the accused persons may renew their bond application.

It is so ordered.

**C. W. GITHUA**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF FEBRUARY 2015**

In the presence of:-

Each accused

Ms Odour for the state

Mr Miyienda for the 1<sup>st</sup> accused and holding brief for Mr Chepkwony for the 2<sup>nd</sup> Accused.

Paul Ekitela Court Clerk.