



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

HIGH COURT CRIMINAL CASE NO. 22 OF 2013

REPUBLIC.....PROSECUTION

=VERSUS=

JULIUS KIBIWOTT RUTOO.....ACCUSED

RULING

1. The accused person herein **Julius Kibiwott Rutto** through his learned counsel **Mrs. Nyamwenga**, made an oral application seeking that he be admitted to bail/bond pending conclusion of his trial. He is facing a charge of murder. It is alleged that on the 6th February, 2013 at Kaptumeg sub location in Nandi County, he murdered **Eliud Kiptum**.

2. The application is opposed by the state. Through a replying affidavit sworn on 15th December, 2014 by **PC Mophat Liboywa** who is the investigation officer in this case, the state objects to the release of the accused on bond mainly on grounds that the family of the deceased and that of the accused are not in good terms and if granted bail, accused's safety and that of his family may be in danger. In the same breath, the investigating officer deposed that the accused's family members were currently living with their in laws.

3. When the application was argued before me on 5th February, 2015, **Ms. Oduor**, learned counsel for the state re-iterated the depositions in the replying affidavit and further pointed out that as the accused's family had relocated to another place which was unknown, the accused might be tempted to abscond.

To counter this argument, **Ms. Nyamwenga** contended that this cannot be a basis for denying the accused his right to bail / bond since the court had an option of releasing the accused on bond with sureties and it would be the responsibility of the surety to ensure that the accused did not abscond.

4. Having given due consideration to the submissions advanced by both counsel's, I wish to state at the outset, that though every accused person has a right to be released on bail or bond pending trial, that right is not absolute. It is limited to existence of compelling reasons which would in the opinion of the court be sufficient to justify denial of that right. However, it is trite that the onus of demonstrating existence of compelling reason lies with the state. See **Republic vs Danson Mgonya & Another High Court Mombasa Criminal case No. 26 of 2008.**

5. In this case, it has been submitted on behalf of the state that if granted bail, the accused will relocate to an unknown place and he will therefore be a flight risk; that the deceased's relatives are hostile to the accused and his family and if he is granted bond, his safety might be in danger.

To counter the latter argument, **Ms. Nyamwenga** submitted that she had instructions from the accused that he would not return to live in the same area as the deceased's relatives if granted bond; that therefore his safety will not be compromised.

6. In my considered view, the reasons advanced by the state in this case do not meet the threshold of compelling reasons envisaged by **Art.49 (1) (h) of the Constitution of Kenya 2010**. The fact that accused is likely to relocate to another area does not mean that he will not have a fixed place of abode which the investigating officer would not be able to identify with due diligence. In addition, this fact in itself is not prove that the accused is a flight risk.

In my view, the court should not allow an accused person's constitutional right to bail to be defeated by mere allegations that he is likely to abscond if he is admitted to bond unless such allegations are substantiated by concrete evidence.

7. Regarding the claim that accused's safety might be compromised if granted bail given the hostility exhibited towards him and members of his family by the deceased's family, I find that this fear has been addressed by the accused's pledge to relocate to a different area from the one in which the deceased's family resides.

8. In view of the foregoing, I am persuaded to find that the state has not satisfied this court that there are compelling reasons which would entitle this court to deny the accused person the exercise of his constitutional right to bond. It is therefore my finding that the application is merited. It is hereby allowed. The accused will be admitted to bond on the following terms:-

- i. He will sign a personal bond of Kshs.1,000,000/- together with one surety of a similar amount.
- ii. The surety, who must be a close relative of the accused, will be approved by the Deputy Registrar of this court.
- iii. The accused once released, will be attending mentions before the Deputy Registrar once every month till the case is heard and determined or other orders are made by this court.

C. W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT ELDORET THIS 9TH DAY OF FEBRUARY 2015

In the presence of:-

The accused in person

Paul Court Clerk

N/A for the state