



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 6 OF 2015

REPUBLIC..... PROSECUTOR

V E R S U S

PETER MUNYOKI KIMANZI..... ACCUSED/APPLICANT

RULING

This is an application for bail pending hearing and determination of the criminal case. It was brought through a Notice of Motion dated 7th May 2015 and was filed on behalf of the accused by counsel Kinyua Mwaniki and Wainaina Advocates. It was brought under Article 24 and 49 of the Constitution of Kenya 2010.

The application has grounds on the face of Notice of Motion. The grounds are that the offence is bailable; that there is no compelling reason for the court to deny the accused bail; and lastly that the accused is willing to abide by the terms and conditions set by the court till the case is heard and determined.

The application was filed with a Supporting Affidavit sworn by the applicant/accused on 7th May 2015. It was deponed that the applicant is a Kenyan Defence Forces Officer aged 25 years. That he had not been involved in any other court proceedings and that his father, who was a farmer, had always supported him. That his father had advised him that if released on bond he should obey the orders of the court so that he does not prejudice family property. It was also deponed that he would be faithful to both the court and his parents and he would attend all court session and give evidence to prove his innocence.

In support of the application was also filed an affidavit sworn by

Francis Kimanzi Maluki the father of the accused. This affidavit annexed a copy of a document of land title Mwingi/Kiomo/1461 measuring approximately 2.60 hectares registered under the Land Registration Act of 2010 in his name as the absolute proprietor and issued on 8th April 2015.

At the hearing of the application, Mr Kinyua for the accused asked the court to grant his client bond as he was working for the Kenya Defence Forces and had been in custody for long. Counsel emphasized that the father of the accused had also sworn and filed an affidavit, and further that the accused had a good defence in the criminal case against him.

The learned prosecution counsel Mr. Okemwa submitted that he had contacted the Investigating Officer of the case who had confirmed that the accused had no previous bad records. That since the accused was an employee of the Kenya Defence

Forces he would comply with the terms of bond which the court would give and attend for trial. Counsel

emphasized that the accused was the one who volunteered himself to the police.

This is an application for bail pending trial. Article 49 1(h) of the constitution states as follows:-

“an arrested person has the right to be released on bond or bail, on reasonable condition pending a charge or trial, unless there are compelling reasons not to be released.”

Courts held that the primary burden is on the prosecution to show or demonstrate the compelling reasons that would justify a court to refuse the grant of bail. The State has chosen not to oppose the application for grant of bail.

I have myself considered the application. I have also considered the facts disclosed on both sides. The general conditions for granting bail have severally been considered by the courts. The court is required to go by the following principles when considering the grant for bail.

(a) whether the accused persons are likely to turn up for trial should they be granted

bail,

(b) whether the accused persons are likely to interfere with witnesses;

(c) the nature of the charges;

(d) the severity of the sentence.;

(e) the security of the accused if released on bond;

(f) in the case of illness of the accused the nature of severity of the illness;

(g) whether the accused persons have a fixed abode within the jurisdiction of the court.

Having evaluated all the facts and information on record, I find no compelling reasons for this court to refuse the request of the accused for bail. He appears to be a person of fixed abode and comes from the jurisdiction of this court. He works for a Government Agency ie Kenya Defence Forces. His safety is not threatened. There is no indication that he will interfere with witnesses. His father is known has sworn an affidavit and even annexed a document of title to the affidavit to demonstrate that he is dependable in making the accused attend court. I am convinced that there is no reason to deny the accused his Constitution right of bail, as in my view the accused will attend trial as and when required.

Both the defence and the State have not proposed any conditions for the grant of bail for the accused. It would be preferably if they did so. However in the absence of any suggestion on bail terms from either the defence or the state, this court has an obligation to determine the most suitable terms of bail. In the circumstances of this case where the accused stands charged with the offence of murder in my view the bail terms have to be constant with the seriousness of the offence. The purpose of condition for bail is not to be punitive to an accused person, but to put such conditions that will ensure that the accused attends court. I thus order that the accused herein be and is hereby released on bail pending trial on his either signing a bond of 1 million shillings with one surety of similar amount or alternatively on paying a cash bail of 700,000/-.It is so ordered.

Dated and Delivered at Garissa this 4th June 2015.

GEORGE DULU

JUDGE