

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 73 of 2012

JOHN KIPROTICH KIPNGETUNY.....PROSECUTOR

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, John Kiprotich Kipngetuny, is charged that on the night of 21st and 22nd of September, 2012 at Kures village in Mogotio District within Nakuru County he murdered Patrick Kiprono Ngetuny contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

On 15th October, 2012 when the applicant was arraigned in court he denied the charge. Pending his trial, the applicant moved the court and was admitted to bail/bond of Kshs.100,000/= with one surety of the like sum.

Before the order for bond was executed Counsel for the respondent informed the court that serious issues had arisen warranting the suspension of the bond. Consequently, this court suspended the orders granting the applicant bail and ordered the Director of Public Prosecutions to file an affidavit to explain the nature of the compelling reasons.

Two affidavits were filed in which the deponents, namely, the investigating officer and two sisters of the deceased, respectively, are opposing the release of the applicant on the grounds that he is likely to commit other offences, interfere with the witnesses or abscond. They also contend that it is in public interest that the applicant remains in custody in order to reform his character.

In reply to the foregoing allegations, the applicant's wife has sworn an affidavit in which she states that her husband is ready to abide by any condition that this court may impose; that he will not interfere with witnesses and that it is not in the public interest that he be denied bail. She further contends that the objection to the applicant's bail is not related to the offence but by the efforts of some of the relative to keep the applicant out of the administration of the estate of the deceased.

Before me Counsel for the applicant submitted that the applicant cannot interfere with witnesses as investigation into the matter have been completed and witness statements recorded; that the situation on the ground is calm; that it is the applicant's constitutional right to be admitted to bail; that the opposition to bail is an afterthought and that it is intended to block the applicant from partaking in the administration of the deceased's estate.

I have weighed the arguments in this application as well as the authority cited, namely **Republic V. Johnstone Kipkurui Sigei & 2 others** Nakuru High Court Criminal Case No. 123 of 2010 where this court held:-

“..... Therefore with the new Constitution, it must now be accepted that by dint of Article 49(1)(h) of the Constitution, every person accused of committing a crime of any nature has the right to be released on bond or bail, on reasonable conditions pending a charge or trial unless there are compelling reasons for him not to be released. Whether an accused person is to be released on bond will depend on the circumstances of each case. The burden of demonstrating the existence of compelling reasons is upon the prosecution.”

Although the applicant did not personally controvert the allegations leveled against him the

burden to prove existence of compelling reasons for denying him bail still lies with the prosecution. This burden never shifts.

In this application deponents of the affidavits have alleged that the applicant is likely to commit other offences, interfere with witnesses or abscond; and that it is in public interest that he remains in custody to reform.

Starting with the last ground, I wish to point out that at this stage the applicant is not a convict but a suspect. As such, he has a right to be presumed innocent until the contrary is proved. After all, releasing him on bail is not clearing him of the charges.

On the allegation that he may interfere with witnesses or abscond, in view of the fact that the main prosecution witnesses are his relatives, there is a high likelihood that he may interfere with them if released. The offence having taken place only recently, there is, naturally tension on the ground.

For the foregoing reasons the bail granted to the applicant is suspended. The applicant may renew it at a later stage of the trial, if need be.

Dated, Signed and Delivered at Nakuru this 7th day of November, 2012.

W. OUKO

JUDGE