



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

HIGH COURT CRIMINAL CASE NO. 1 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

LOKORIO MALER.....ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code to which he pleaded not guilty.
2. At the time of plea taking the State, through Mr. Mwaura, informed the court that they did not have any compelling reason to enable the court deny the accused his constitutional right to bail. Mr. Pukha submitted that the same should therefore be released on reasonable bail/bond terms. To enable the court make an appropriate order therein, I directed the probation office to prepare and submit to court pre-bail report which has now been filed.

PRE-BAIL REPORT

3. It was indicated that the applicant was a father of five children, who were not school going, at the time of the report and that the home environment was conducive for his release, though there was no one willing to stand surety for him. It was indicated therein that the community was not hostile towards his release.
4. On the victim statement, it was stated that they could not be reached. In conclusion it was stated that the accused person resides at Echor Elim village in Loima Sub County, but was arrested in Kalemngorok in Turkana South sub-county, where the offence occurred. According to the report, this indicated that the accused person had no fixed abode, since he moves from one place to another, as a pastoralist looking for pasture. It was therefore concluded that he was a flight risk.

DETERMINATION

5. Bond is a constitutional right to every accused person under Article 49(1)(h) of the Constitution, which may only be limited where there are compelling reasons, advanced by the Prosecution to the satisfaction of the court. The purpose of bond however remains to secure the attendance of the accused person to his trial if and when called upon as provided for under Section 124 of the Criminal Procedure Code.
6. What constitutes compelling reasons are now well settled in several judicial pronouncements and in the Bond/Bail Policy Guidelines, to include but not limited to:-

i. The nature of change.

ii. The strength of the evidence which supports the change.

iii. The gravity of the punishment in the event of conviction.

iv. The previous criminal record of the accused if any.

v. The probability that the accused may not surrender himself for trial.

vi. The likelihood of the accused interfering with witnesses or that he may suppress any evidence such as incriminating him.

vii. Likelihood of further charges being brought against the accused.

viii. The probability of a finding of guilt.

ix. Detention for the protection of the accused.

x. The necessity to procure a medical or social report pending the disposal of the case.

xi. Accused persons own safety, security and protection – REPUBLIC V KIMUNYA.

xii. If the accused person is likely to pose public danger by being released on bail.

xiii. If by releasing the accused on bail public confidence in the administration of justice will be dismissed.

xiv. The character antecedents, associations and community ties of the accused person.”

7. In this matter, the State offered no compelling reasons and relied upon what was stated in the pre-bail report and submitted that since the applicant comes from a remote area, was a flight risk and it will be hard to trace him.

8. On behalf of the accused, Mr. Pukha submitted that though the pre-bail report recommended that he should not be admitted to bail, the said report should not be used to deny him his constitutional right to bail. I am in agreement with Mr. Pukha, that the reason advanced by the probation officer on its own cannot be a ground for denying an accused person bond.

9. The Supreme Court of India in the case of **SANJAY CHANDRA v CENTRAL BUREAU OF INVESTIGATION (2012) 1 SCC 49** has this to say: -

“The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative, deprivation of liberty must be considered punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found guilty.”

10. I take the view that the mere fact that the accused comes from a remote area and is a pastoralist who moves from place to place, as a stand-alone ground, cannot be used to deny him his constitutional right to bail, as to do so will render Article 49(1)(h) of the constitution of Kenya 2010 a mirage to the good people of Turkana. The court is alive to the fact that, the Turkanas are pastoralists who move from one place to another depending on the season in search of pasture, which does not make them flight risk.

11. I therefore find and hold that the prosecution did not place before the court any compelling reasons to enable me deny the accused his constitutional right to bail and that those which were advanced through the pre-bail report, may be adequately ring-fenced through appropriate bond terms.

12. The accused shall therefore be released on bond of Kenya shillings two hundred thousand (Kshs. 200,000/-) with one surety of similar amount. In the alternative the same may deposit cash bail of Kenya shillings one hundred thousand (Kshs. 100,000/-)

together with one surety of similar amount.

13. Upon his release, the accused shall report to his area Assistant Chief, who shall monitor his movement throughout the period of trial and the accused shall report to the Assistant Chief after every thirty (30) days and the same shall file a report with the Deputy Registrar of this court after every thirty (30) days with the first of such reports being immediately upon his release on bail/bond and it is ordered.

Dated, Signed and Delivered virtually this 3rd day of December, 2020

.....

WAKIAGA

JUDGE



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