



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO. E019 OF 2020
DANCAN NDUVTA MUSYOKI.....APPLICANT
VERSUS
REPUBLIC RESPONDENT
RULING ON BAIL

The case for the applicant

Messrs Omondi Tunya & Advocates for the applicant moved this court under certificate of urgency pursuant to section 123 of the Criminal Procedure Code (Cap 75) Laws of Kenya and sought an order for the release of the applicant on bail pending his trial on a charge of murder.

The application is supported by seven grounds that are set out on the face of his chamber summons dated 17th December 2021 with the following being the major grounds.

The applicant has been in remand for more than one year and his previous advocate did not apply for his release on bail. The applicant is the sole bread winner of his family and without him the family is left to beg for food from the extended family members of his family and well-wishers.

The applicant has fully and overwhelmingly co-operated with the prosecution and will always continue to do so if released on bail

The applicant has a fixed abode in Mukuru Kwa Reuben area and in his ancestral home in Kitui.

Counsel for the applicant (Mr. James Ndungu) has deposed to 11 paragraphs supporting affidavit in support of the application; whose major averments are as follows. Counsel has replicated the same matters that are set out in the chamber summons which I hereby decline to reproduce herein.

The submissions of the applicant

Counsel for the applicant has filed written submissions in support of the application. In his submissions counsel has adopted the grounds that are set in the chamber summons as his submissions except for the following major matters. The applicant is a professional carpenter and is not a flight risk. His uncles who live in Machakos are willing to stand as his sureties and are ready to host him until his trial is concluded.

Additionally, counsel has also submitted that there are no compelling reasons to deny him bail in terms of article 49 (2) (h) of the 2010 Constitution of Kenya.

The case for the respondent

The respondent through the investigating officer (No. 81548 Cpl. Judith Muthoni) has filed a 12 paragraphs affidavit in opposition to the application; whose major averments are as follows.

The applicant seriously assaulted the deceased, who was his neighbor at Dandora phase V on 26th July 2020 occasioning him serious injuries. On 27th July 2020 the deceased died while undergoing treatment at Kenyatta hospital. The neighbours of the applicant have recorded statements and are crucial witnesses. The said witnesses are well known to the applicant; who also knows their residences.

If the applicant is released on bail there is a high likelihood that he will interfere with the prosecution witnesses. Furthermore, if the applicant is released on bail he is likely to abscond from the jurisdiction of the court; since he does not have a permanent job as he is a carpenter. Additionally, the prosecution case against him is very strong and there are high chances of conviction since the applicant knows there are

several eye witnesses. Furthermore, if the applicant is released on bail, there is reasonable apprehension that his life will be in danger as members of the public at Dandora phase V might attack him to avenge the death of the deceased.

The submissions of the respondent

The respondent has filed written submissions in opposition to the application.

Counsel for the respondent (Ms. Peris Mina) has submitted that the applicant is likely to interfere with the prosecution witnesses who are not only his neighbours but are also eye witnesses. If the applicant is released, he is likely to intimidate or threaten the witnesses. Counsel has cited *Republic v Frederick Ole Leliman & 4 others* (2019) e-KLR, in which that court observed in respect of the public interest and the compromise of the criminal justice system, that interference with the case may take many forms among them, influencing or compromising or inducing or tarrying a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. That court also pointed out that such interference may take place at any stage of the proceedings including immediately on commission of the offence, during investigations and during trial and can be committed by any person including the accused, witnesses or other persons.

Counsel also submitted that the right to bail under article 49 (1) (h) of the 2010 Constitution is not absolute.

Furthermore, counsel also submitted that the applicant has no fixed abode and if released on bail, it will be a herculean task to trace him.

Issues for determination

I have considered the affidavits and the submissions of both parties in the light of the applicable law.

As a result, I find the following to be the issues for determination.

1. Whether the applicant is likely to interfere with the prosecution witnesses.
2. Whether the applicant is a flight risk.

Issue 1

The investigating officer (No. 81548 Cpl Judith Muthoni) has not produced any evidence from the prosecution witnesses that the applicant has either in person or through his proxies threatened or interfered with the witnesses. Her fears in that regard are unfounded and they merely amount to speculation. Unfounded fears or speculations will not form the basis to deny bail to the accused/applicant.

Issue 2

I find the affidavit of the applicant credible that he has a fixed abode in Mukuru kwa Reuben and in Kitui. I further find that he has strong family ties who are ready to stand as his sureties. His averments in this regard have not been contradicted by the respondent. His family are also ready to host him if he is released on bail pending his trial.

I also find as credible that the applicant co-operated with the prosecution.

In the premises, I find that the applicant is not a flight risk and will attend his trial.

In the premises, I find no compelling reasons to deny the applicant bail with the result that I hereby allow his application.

Consequently, the applicant is hereby released on a bond of shs 100,000/- with a surety of similar amount to be approved by the Deputy Registrar of this court.

In the alternative to the foregoing, the applicant is hereby released upon depositing cash bail in the sum of shs 60,000/-.

In the interim period the applicant will remain in custody until he complies with the terms of his release on bail/bond.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF APRIL 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Messrs Omondi Tunya for the accused/applicant

