



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 21 OF 2019

REPUBLIC.....PROSECUTOR

VS.

PAUL WAWERU NJOROGE.....ACCUSED

RULING

1. **PAUL WAWERU NJOROGE** (accused) is awaiting his trial for the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. The offence is alleged to have occurred on 24th February, 2019 at Githurai 44 in Kasarani sub-county within Kiambu County.

2. By Notice of Motion application dated 16th January, 2019 the accused seeks to be released on bail pending his trial as set out in **Article 49(1)(h)** of the Constitution. That Article provides that an arrested person has the right:-

“(1h) – to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be release”

3. The accused further stated in his affidavit in support of his application that prior to his arrest over this offence, he was a businessman at Waitethie area. Although he did not name his spouse he deponed that he is married with a ten year old son. Further that he has a fixed abode in Waitethie area.

4. The application was opposed by the prosecution through the affidavit of the investigating officer (I.O.). In that affidavit it was deponed that the victim of the present offence of murder, Regina Wairimu Wambui, deceased prior to her murder, filed complaints of threats made to her by the accused which were recorded at Kiamumbi police station under OB Nos. 44/6/11/2018 and OB 20/22/11/2018. Further, that the accused has a pending criminal trial at Limuru Chief Magistrate’s court being Lari Police Station being Cr. No. 218/162/2017. In that matter that there was a pending warrant of arrest against the accused up to the time of his arrest over this matter. The I.O. stated that he and the assistant chief following the accused’s arrest, the accused threatened to kill both of them once he does conclude with his trial. I.O. also alluded to likelihood of the accused being lynched by members of the public over this offence.

ANALYSIS AND DETERMINATION

5. Although learned counsel for the accused Mr. Olaka submitted there was no proof produced by the I.O. of the threats to the deceased or proof of a pending criminal case, I dare say that the I.O. stated those issues under oath and they needed a response, under oath, from the accused. He chose not to respond and this Court therefore will assume that the accused does not deny the same.

6. The issues raised by I.O. are serious. In my view they are compelling reasons why the accused should not be released on bail pending trial.

7. The prosecution in my view has met the stand of proof, on balance of probability and have shown to this Court there are compelling reasons why **Paul Waweru Njoroge** should not be released on bail pending his trial. In that regard, I am persuaded by what was stated in the case of **R. VS. COUTURE 2004 BCCA 215 (CanLII)** thus:-

“Considering bail applications with the public in mind can mean different things in different contexts. In some cases, it may require concern for further offences. In other cases, it may refer more particularly to public respect for the administration of justice. It is clear, however, that the denial of bail is not a means of punishment. Bail is distinct from the sentence imposed for the offence and it is necessary to recognize its different purpose which, in the context of this case, is largely to ensure that convicted persons will not serve sentences for convictions not properly entered against them.”[Underlining added.]

8. In the end the Notice of Motion dated 16th January, 2019 is dismissed. Paul Waweru Njoroge shall remain in custody pending his trial.

RULING DATED AND DELIVERED AT KIAMBU THIS 19TH DAY OF APRIL 2021.

MARY KASANGO

JUDGE

Coram:

C/A : Kevin

Accused : present

For the accused..... Mr. Olaka

For the prosecution..... Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE