



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 14 OF 2020**

**REPUBLIC.....DPP**

**VERSUS**

**SAMUEL NJUGUNA MANYIVA.....ACCUSED**

**RULING**

The applicant has been charged before this court with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Upon plea being taken on 22.5.2020, counsel for the applicant made an oral application for bail on reasonable terms. The prosecution has opposed this application and accordingly filed a replying affidavit in opposing the application of the applicant. Basically, the objection has been on the following grounds;-

- i) THAT applicant ought to be remanded in custody for his own safety.
- ii) THAT he is likely to interfere with the prosecution witnesses.
- iii) THAT the offence the applicant faces is serious and attracts death sentence in case of conviction

I have considered the oral application of the applicant and the objection raised to it by the prosecution. Under Article 49(1)(h), every accused person has a right to be placed on bail pending the determination of this case, unless there exists compelling reasons that would justify the denial of the right. And it is incumbent upon the prosecution to show the existence of such compelling reasons. Some of the circumstances that have been held by the courts as constituting compelling reasons are: -

- The nature of the offence and the seriousness of the punishment in case of conviction.
- The strength of the prosecution's case.
- Character and antecedents of the accused person.
- Likelihood of interference with witnesses.
- Need to protect witnesses
- Whether accused is a flight risk.
- Public order and security.

And these are some of the guidelines given in the celebrated case of Republic versus Mgunya & Another (2011) EA36. The list is nonetheless not exhaustive. This means that each case would be considered independently depending on its own circumstances in determining where or not there exists compelling reasons.

From the onset, it must be declared that the purpose of bail/bond is to enable the accused released so that he may attend and conduct his case while he is out of custody. It is not a licence for him to run away and avoid facing his accusers in court. Neither is it a licence for him to interfere and or frustrate the course of the investigations or the trial. On the grounds raised herein: -

(a) That he ought to be remanded for his own safety and security:

The prosecution made a claim that the security and safety of the applicant would be released on bond. However, not a single incident was

cited or evidence given to support this claim. The Hon. Justice J. Ngugi in republic versus Maxwel Ochieng Otieno (2016)eKLR, held amongst others that this alone cannot be a compelling reason since it is in fact responsibility of the state to ensure the security of its citizens.

In our case, it has not been proved that indeed the release of the applicant on bond would be to his detriment. I am therefore not convinced that this is a compelling reason good enough for this court to deny the accused the right to bail.

(b) Likelihood of interference with witnesses:

Again no evidence was tendered to show actual or perceives interference with either the witnesses or investigations. In the absence of this, this claim would only remain unfounded and fear which would not amount to a compelling reason. I get guidance on this in this court's recent decision in HCCR case No. 10/2020, Republic versus Lucy Waihera Njuguna and another. Also the decision of Hon. Lesit J. in Republic versus Richard David Alden (2016) eKLR.

(c) That the charge is serious:

There is no doubt that the charge of murder contrary to section 203 of the Penal Code, that the accused faces is a serious charge. The question is whether this alone would constitute a compelling reasons. Under Article 49(1)(h) quoted above, ALL accused persons are entitled to the right to bail pending trial. This right extends to all accused regardless of the nature of the charges that they may face. It follows that the seriousness of the charges alone cannot constitute a compelling reasons.

I am not convinced therefore that the prosecution has proved the existence of any compelling reasons herein which can make this court deny the accused the right to bail. I accordingly dismiss the objection of the prosecution and order that the accused may be released on bond on the following terms: -

- (i) Accused may be released on a bond of Ksh.1million with 1 surety of a similar amount.
- (ii) He is ordered never to contact and or interfere with any prosecution witnesses herein or the investigations, either in person or by proxy or representative.
- (iii) He is ordered to attend court at all the times as may be ordered by the court from time to time till this case is determined.
- (iv) He is ordered to specifically declare his place of abode (residence) upon release from custody.

**D. O. OGEMBO**

**JUDGE**

**19.6.2020**

Court:

Ruling read out in open court (via skype) in presence of the applicant, his advocate Ms. Odembo and Mr. Ndombi for the state.

**D. O. OGEMBO**

**JUDGE**

**19.6.2020**