



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 4 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

NIMROD KIBUKU KIRANGA.....ACCUSED

RULING

1. This application seeks for orders for release on bail pending hearing and determination of this case.
2. The grounds supporting the application is that the applicant has a constitutional right to be released on bail and that he is presumed innocent unless and until proven guilty.
3. It is further stated that the applicant is ready to abide with any conditions the court may impose and that no compelling reasons have been given not to release him.
4. In an affidavit sworn by the investigation officer PC John Melvin Okwalo the application was opposed on grounds that the suspect fled his home immediately after the incident and police took about one year to arrest him.
5. The Investigating Officer states that he has information that the applicant is preparing to take flight to an unknown destination. The applicant was planning to travel to Qatar and that he has no fixed abode.
6. Ms. Kimotho for the applicant submitted that the applicant had gone to stay with his mother at their home in Ruiru from where he was arrested. It was not true that the applicant had fled as alleged.
7. This application is brought under **Article 49(1)(h) of the Constitution** which provides: -

49(1) An accused person has the right: -

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
8. The prosecution state that the accused fled to escape arrest immediately after the commission of the offence. As argued by the defence, taking flight before arrest and charge is not a compelling reason to deny bail. It is denied that the applicant took flight for he says he went to stay with his mother at their home in Ruiru.
9. The investigating officer did not find out where the family of the accused lived after the commission of the offence. Neither did they make any effort to find out whose home the accused was residing at the time of arrest. That information would have helped to respond to the denial of the applicant that he had fled.
10. I find that it has not been established that the applicant fled after the incident. Even if he did, I am not convinced that this is a compelling reason not to release him.
11. The investigating officer did not annex any information of proof that the applicant is planning or preparing to take flight or to travel to Qatar as alleged.
12. The allegation that the applicant has no fixed abode has not been satisfied so as to make a compelling reason out of it.

13. It is my considered opinion that the prosecution have not established before this court that there is any compelling reason why the applicant should not be released.

14. I find the application merited and allow it on the following terms;

i. The applicant may be released on bond of Kshs. 500,000/= with one surety.

ii. To deposit his passport with this court pending disposal of the case.

iii. Not to leave the jurisdiction of this court without its permission.

iv. To attend monthly mentions before the Deputy Registrar until the case is finally disposed of.

15. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 30TH DAY OF APRIL, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for State

Ms. Kimotho for Applicant

Applicant present in person