



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCR NO. 8 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JAMES KIRIMI KAGWIMA ALIAS MAUKI GITURA.....1ST ACCUSED

JOSEPH MACHIRA NJAGI ALIAS OSAMA.....2ND ACCUSED

R U L I N G

1. **JOSEPH MACHIRA NJAGI, Alias OSAMA**, the 2nd accused in this case of murder has vide Notice of Motion dated 6th September 2019 applied to be released on bail/bond pending trial.
2. The grounds upon which this application has been brought are listed as follows namely:-
 - a. **That the accused persons have been in custody now for a period of 82 days.**
 - b. **That there are no compelling reason to deny bond to the accused persons.**
 - c. **That it is in the interest of justice to release the applicant on reasonable bail terms.**
3. The Applicant has supported this application with his affidavit sworn on 6th September 2019 where he has reiterated the above grounds adding that he undertakes to attend court whenever required.
4. The Applicant's counsel urged this court to abide by policy guidelines on bail pointing out that the 2nd accused is not a flight risk as he is a family man with a young family. He also asserted that the Applicant is a businessman doing butchery business and supplying local school.
5. He contends that the allegation made by the investigating officer, P.C Douglas Maruti do not hold water because he was arrested at Materi Market where he alleges that he usually carried on butchery business. He denies having gone into a hiding.
6. The Applicant asserts that his right to bail under **Article 49(1) (h)** of the **Constitution** should be availed to him as no compelling reason has been advanced, in his view, to deny him that right.
- 7 The Respondent through Office of Director of Public Prosecution has opposed this application. Its opposition is majorly hinged on the Replying Affidavit sworn on 10th September 2019 by P.C Douglas Maruti, the investigating officer in this case. The investigating officer has contended that the Applicant is a flight risk as he disappeared immediately the incident which is the subject of this case took place. He asserts that the applicant only re appeared after eight witnesses had testified against the other suspects who were arrested earlier. According to the investigating officer, it took them two years to arrest the applicant and releasing him on bond may not be safe as he is a flight risk.
8. Maari, the learned prosecuting counsel further added that the allegations that the applicant is a butcher supplying local schools is not backed by any evidence because none has been tendered to prove the same. She has faulted the applicant contending that the allegation of carrying out butchery business is an afterthought adding that the applicant should be treated with caution as he comes from the same place with witnesses and therefore there was likelihood of interference or compromising the witnesses.
9. This court has considered this application and the response by the State. The only question for determination in this application is whether the State has advanced compelling reason to deny the accused persons herein their right to bail as provided under the Constitution.

10. This court will begin with the last reason/basis advanced by the Respondent which is likelihood of interference of witnesses. While this is a serious allegation that should be addressed, I find that the State through the investigating officer has really not tendered any evidence or sworn an affidavit to back up this serious allegation. In the absence of an affidavit or specific facts or evidence to demonstrate interference or compromising of witnesses, I do not find that ground compelling to me to deny the accused persons bail. The prosecution should have availed evidence or even show basis to demonstrate that the accused person either interfered or made attempts to interfere, intimidate or compromise the witnesses through inducements or anything of the sort. I am therefore not persuaded in that regard that the reason advanced is compelling enough. In fact the social inquiry done does not support the Respondent's views.

11. I have also looked into the claims that the applicant is a flight risk and that he is likely to disappear if released on bond because it took the police two years to apprehend him. I have gone through the social inquiry report dated 16th September 2019 and it is apparent that the applicant has a family, a fixed place of abode and has steady business which in my view supports the applicant's contention that he is not a flight risk. In any event the concerns/fears of the State regarding the likelihood to abscond can be address by an order of a substantial surety because at this stage of proceedings the accused person enjoys the right to presumption of innocence as provided under **Art 50 (2) (a)** of the **Constitution** and the court's main factor for consideration is to ensure that the accused turns up in court whenever required to do so. That in my view can be addressed through suitable bond terms.

In the premises I find merit in this application. Having gone through the probation reports of the two accused persons, though the 1st accused has not made a formal application for bond, I am inclined to grant both of the accused persons, a bond of Kshs.1 million (One million Kenya Shillings) with a surety of a similar amount. If released the accused persons are directed to attend court promptly and on time whenever required to do so. They are also precluded from making any attempts either directly or indirectly to any of the witnesses in this case or any member of their families.

Dated, signed and delivered at Chuka this 26th day of September, 2019.

R.K. LIMO

JUDGE

26/9/2019

Ruling signed, dated and delivered in the open court in presence of Maari for Respondent and M'Inoti for Applicant.

R.K. LIMO

JUDGE

26/9/2019