



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 70 OF 2019

SHADRACK MIRITI AKWALE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. SHADRACK MIRITI AKWALE (“the applicant”), has been charged with the offence of murder contrary to *section 203 as read with section 204 of the Penal Code*. It is alleged that on 26/7/2019, at Kangeta Location in Igembe Central Sub-County within Meru County, the applicant murdered Ayub Mwongera (“the deceased”).

2. The applicant denied the charge and his Advocate, **Mr. Mwirigi** applied for bond on behalf of the applicant.

3. That application was opposed by the prosecution vide the replying affidavit sworn by the investigations officer, **PC Athman Buya**. He alleged that the applicant had embarked on threatening key prosecution witnesses especially PW2 and PW3 who had reported the same vide **OB 16/14/10/2019**. That further the area chief had, vide letter dated 12/10/2019, indicated that the applicant was a serial criminal.

4. That the murder occurred fairly recently and the family of the deceased needs time to heal. He contended that the family’s contact with the applicant may bring up vengeful feelings and lead to committal of further offences.

5. The applicant replied to the allegations of **P.C. Athman Buya** vide his affidavit dated 23/10/2019. He averred that the allegations made by **P.C. Athman Buya** and the area Chief were baseless. That the area chief was a great friend of the deceased and he was using his position and state machinery to level unsubstantiated allegations against him.

6. That it was impossible for him to threaten **Pw2** and **Pw3** while he was in custody. That **Pw2** and **Pw3** had leased the deceased’s property and that after the deceased received rent from Pw2 and Pw3, he drunk excessively during the night only to be found dead in his house at 1100hrs.

7. He concluded that he has nine (9) children who require his support since their mother is unemployed. I have considered the affidavits and submissions on record.

8. In **Republic v Richard David Alden [2016] eKLR**, the Court set out the general principles that guide the Court in enforcing the principles under **Article 49(1) of the Constitution**. The Court stated:-

“The Bail and Bond Policy Guidelines were formulated specifically to guide the police and judicial officers in the administration of bail and bond. The guidelines set out what the courts should bear in mind when considering an application for bail. They are similar to those set out under section 123A of the Criminal Procedure Code. These general considerations are: the nature of the offence; strength prosecution case; character of the accused and antecedents; failure by the accused to observe previous bail or bond; witness interference; protection of the victim; relationship between the accused and the potential witness(es); whether the accused is a child offender; whether the accused is a flight risk; if the accused is gainfully employed; public order; peace security; and whether there is need for the protection of accused person.”

9. In the present case, the prosecution alluded to applicant interfering with witnesses and the probability of committing further offences. The prosecution only relied on the **OB. No. 16/14/10/2019**. There is no indication as to the nature and mode of interference committed by the applicant. The prosecution did not exhibit the OB extract itself for the Court to discern what was reported. Only a chit marked **OB/16/14/10/2019** stamped with the stamp of Kangeta Patrol Base was exhibited. The nature of the report was not disclosed.

10. It is worth to note that, at the time the alleged **OB** was being entered, if at all it was as there was no evidence of the same, the applicant was already in custody. The applicant was arraigned in Court on 9/9/2019. The **OB** is alleged to have been entered on 14/10/19. The

prosecution has therefore, in my view, not proved the element of interference with witnesses.

11. There was the allegation that the applicant was a habitual criminal. While the Court has no reason to doubt the area Chief, the instances of the applicant's previous unbecoming conduct was never disclosed or proved. Mere allegations is not enough. They must be backed with specific and cogent evidence especially when the same is denied like in this case.

12. In this regard, although the offence is serious, I do not think the prosecution has established the existence of any compelling not to grant bail to the applicant.

13. Accordingly, I allow the application. The applicant may be released on a personal bond of Kshs.300,000/- together with a surety of a similar amount.

DATED and DELIVERED at Meru this 27th day of November, 2019.

A. MABEYA

JUDGE