



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 32 OF 2018

REPUBLIC PROSECUTION

VERSUS

ABDI ABDALLA DECOSTA ACCUSED

RULING

1. The Applicant **Abdi Abdalla Decosta** was arraigned before court on 21st May 2018 for the offence of murder. He pleaded not guilty. Immediately after pleading to the information his counsel applied that he be released on bond.

2. This was opposed vide a replying affidavit sworn on 30th May 2018 by No. 101967 PC Isaac Muthomi who is the investigating officer attached to DCI Isiolo . He deponed that the Accused person was a Senior Sergeant attached at Administration Police Isiolo sub-county. That the Accused on te 18th day of April, 2016 at around 0630 hours while armed proceeded to the residence of Zainabu Dalacha (PW1) within Isiolo township, opened fire and shot the deceased three times. The accused went at large and deserted from duty and was only apprehended on 27th March 2018 that is more than two years after the commission of the offence. While at large and even after his arrest he threatened members of the deceased’s family. The accused is a flight risk and should be released on bail, he is likely to abscond.

3. These averments were corroborated by an affidavit sworn by Omar Godana Dida on 30th May 2018, father of the deceased. That the accused is using his relatives to threaten witnesses that they will deal with them upon his release. He reported this threat at Isiolo Police Station.

4. **Right to bail is a constitutional right envisaged under Article 49(1)(h) of the Constitution provides:-**

“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.”

Article 50 of the Constitution provides that:

“(2) Every accused person has the right to a fair trial, which includes the right—

(a) to be presumed innocent until the contrary is proved;..”

5. Therefore, every Accused person who has not been convicted ought to be presumed innocent until the contrary is proved. As a result, bail ought to be granted. However, where there are compelling reasons not to then such a right should be denied. What then is categorized as compelling reasons? **Chesoni J (as he was then) Nganga v Republic [1985] KLR 451** rendered himself as follows:-

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;

a) the accused will fail to turn up at the trial or to surrender to custody or;

b) the accused may commit further offences; or

c) he will obstruct the course of justice.

The primary purpose for bail is to secure the accused person's attendance to court to answer the charge at the specified time. I would therefore agree with Mr Karanja that the primary consideration before deciding whether or not to grant bail is whether the accused is likely to attend trial."

6. It has been submitted that when the Accused allegedly committed the crime he went into hiding for about two years before he was apprehended on 27th March 2018. Additionally, it is asserted that he has been threatening the witnesses.

7. For this reasons I reject the application by the Accused person in this case. He shall remain in custody during the pendency of this trial.

DATED and DELIVERED this 28TH day of June, 2018.

A.MABEYA

JUDGE