



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 16 OF 2018 (MURDER)

REPUBLIC.....PROSECUTION

VERSUS

JOHN MURITHI NDIGA.....ACCUSED/APPLICANT

R U L I N G

1. The applicant through his advocate made an oral application for bail. The respondent opposed the application on the grounds that it had compelling reasons for the applicant not to be released on bond.
2. An affidavit in support of the application sworn by one Diana Ndunge Musingi the wife of the applicant states that the applicant hails from Mbiri in Kirinyaga County.
3. It is the deponent's brother who was allegedly killed by the applicant in unclear circumstances. She states that her husband is the bread winner at home and that both the family of the deceased and that of the applicant are not opposed to him being released on bond. She denied the averment by the investigating officer that there is acrimony between the two families.
4. The compelling reasons contained in the affidavit of the PC Woman Regina Syombua the investigating officer are that the applicant is alleged to have murdered his brother in law. The witnesses include a minor who is a child of the applicant and other close relatives.
5. If he is released on bail, he is likely to interfere with the witnesses and more so, the vulnerable one who is a minor. Further that, if he is released on bond, he is likely to face hostility from the deceased's family members who are said to have been looking for him on the day of deceased's burial to lynch him.
6. The applicant in his affidavit denied the allegations of the likelihood to manipulate the prosecution witnesses. He said his children who are in school have been traumatized by his arrest and confinement in remand for murder charges.
7. He states further that his in-laws regularly visit him in remand and it is untrue that they are hostile towards him. His son, his wife who are witnesses in the case also visit him in remand.
8. I have given due consideration to the fact that the wife of the applicant through not compellable under Section 127 of the Evidence Act has been lined up as a prosecution witness. She has defended the applicant that he is not likely to manipulate her or any other witness and added that the in laws of the applicant have no problem with him.
9. The applicant himself says that his wife and son who is also a witness visit him in prison. The applicant undertakes to abide with any conditions given by the court.
10. I note that the prosecution have not answered the averments in the affidavits of the applicant and his wife. For this reason, I find that the prosecution have not demonstrated any compelling reason why the accused should not be released.
11. The prosecution have the benefits of the witness protection program to be utilized in case there is a witness under threat. If it is found appropriate the minor witness may be considered and be accorded protection.
12. That I am inclined to allow this application. However, before this court gives the terms of release, I wish to give some directions with a view of obtaining further information to guide the court on the terms of release.
13. I hereby direct that a home inquiry report be availed by the probation officer within 7 days.
14. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 29TH DAY OF OCTOBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mate for State

Mr. Andande for Mogusu for accused/applicant

Applicant present