



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 61 OF 2014

REPUBLIC.....RESPONDENT

VERSUS

BBOSA GIANT.....ACCUSED

RULING

1. The applicant **BBOSA GIANT** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 14th day of July, 2014 at Muthurwa Estate within Nairobi County murdered **PAUL BAGANYI ABDU**.
2. He pleaded not guilty to the said charges and by an application dated 3/11/2016 sought to be released on bond pending trial. In support of the said application it was deponed that the applicant was facing an allegation of murder which he knew nothing about and that the court was yet to make a determination as to whether any crime of murder was committed by himself and therefore the allegations per se, however grave, could not be proper basis to deny him his basic fundamental freedom and human rights guaranteed by the Bill of Rights under the Constitution.
3. It was deponed further that his continued detention pending conclusion of the trial gravely undermines and devalues his unqualified constitutional right to be presumed innocent until the contrary is proved. It was stated that the applicant was sickly and in need of special medical attention outside the remand facilities. It was contended that the applicant was the sole breadwinner of his family who had undergone untold mental and psychological anguish and trauma.
4. In opposition to the said application the State filed a replying affidavit sworn by **CPL DORIS MALIBE** the investigating officer in which it was deponed that on 14/7/2014 at Muthurwa Area Block D8, neighbours responded to a distress call at 11.30 p.m. and after breaking the door to house No. 4 found the deceased lying in a pool of blood with the accused person attempting to flee while carrying a bag before setting upon the applicant who then attempted to flee but was chased down, arrested and handed over to the police.
5. It was deponed further that the accused and the deceased lived together with a third person who is at large all being Ugandan citizens and therefore there was apprehension that the applicant is a flight risk taking into account his behavior before arrest and by the fact that he is a foreigner from Uganda who could easily flee the jurisdiction of the court.
6. It was further stated that there was a reasonable apprehension of the accused interfering with prosecution witnesses who were his neighbours at the material time and were still residing within the

same locality and therefore subvert the course of justice. On the medical condition of the accused it was deponed that the same can be managed at the Remand prison which is well equipped.

SUBMISSIONS

7. On behalf of the applicant it was deponed that the purpose of bail is to secure the attendance of the applicant to court during trial subject to terms and conditions and that there was no discrimination between Kenyans and foreigners when it comes to the enjoyment of the Constitutional Right to bail. It was submitted that the same is not known to prosecution witnesses and had relatives within Kenya who would be able to stand surety for him.

8. On behalf of the State it was submitted that the applicant is a Ugandan Nationality who lived together with the deceased and a third person, a Ugandan and a suspect in the case who is still at large and being sought by the police. It was submitted that the conduct of the accused at the time of his arrest by attempting to run away from the scene of the offence indicates that he is a flight risk.

ANALYSIS AND DETERMINATION

9. Under **Article 49(1)(h)** bail/bond is now a constitutional right of every accused person regardless of the nature of the offence and is only limited when there are compelling reasons to be advanced by the prosecution unless it is in respect of an offence which is punishable by a fine only or by imprisonment for not more than six (6) months.

10. The constitution has not defined what compelling reasons are, however, **Sections 123 – 133 of Criminal Procedure Code** gives provision for bail and the Judiciary through the National Council on the Administration of Justice has issued Bail and Bond Policy Guidelines to guide the Judicial Officers in granting bail wherein the following are identified as guideline 4.9:-

- a) The nature of the charge or offence.
- b) The strength of the prosecution case.
- c) Character and antecedents of the accused person.
- d) Failure of the accused person to observe bail or bond terms on previous occasions.
- e) Likelihood of interfering with witnesses.
- f) The need to protect the victims or victims of the crime from the accused person.
- g) The relationship between the accused and potential witnesses.
- h)
- i) The accused person is a flight risk as in where the accused is a foreigner without a fixed abode.

Among others.

11. In this application I find that the State has provided on a balance of probability that there are compelling reasons strong enough to enable the court deny the accused the enjoyment of his Constitutional Right these being:-

- a) The conduct of the accused at the time of arrest.
- b) The accused being a foreigner is likely to be a flight risk having not provided any evidence that he has a fixed abode in Kenya.

c) Since the accused and the deceased together with another who is at large were staying in the same house it is clear to my mind that the accused stands in such a relationship of inference with the potential witness.

12. I am therefore satisfied and hold that there are reasonable valid compelling reasons to enable me deny the accused the enjoyment of his Constitution Right to bail which I hereby do. The accused shall remain in custody until the final determination of the cause.

DATED, DELIVERED and SIGNED at Nairobi this **31st** day of January, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Nduati for the State

Mr. Amutala for the accused

Accused present

Paul court clerk