



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
CRIMINAL CASE NO. 69 OF 2015

LESIIT, J

REPUBLICPROSECUTOR

V E R S U S

ONESMUS MUTUKU MWOLOLO..... ACCUSED

RULING

1. This is the second application for bail pending trial by the accused. The first application was made vide a Notice of Motion dated 4th August, 2015.
2. I have looked at the ruling of the learned Mutuku, J after hearing the application. In that ruling my learned sister Judge found that issues the prosecution raised against the release of the accused on bond was the fact that he was a flight risk having gone into hiding after the offence and also that he was likely to interfere with witnesses. On considering the two grounds the court ruled against granting the accused bail having taken into account that the police searched for the accused and only found him after one year after the offence in a neighbouring county. The court stated clearly that it harboured doubts as to whether the accused will attend court when required to do so.
3. In the reviewed application Mr. Swaka for the accused has urged that two years since the offence was committed no witness has been called to testify, which failure he attributed squarely on the prosecution and the police.
4. Counsel urged that the accused was not a flight risk as he is a Kenyan and had a known place of abode. Mr. Swaka also urged that the accused had no propensity to interfere with witnesses.
5. The court required counsel to file additional affidavits dealing with the issue of accused place of fixed abode and how he proposed to cater for his daily needs. Both issues were not dealt with in the filed affidavit in support of the renewal application dated 31st March, 2017.
6. Following that direction three affidavits in support of the application were filed dated 11th April, 2017. I have considered each of these affidavits.
7. In affidavit of Christine Itumo, mother of accused, she pledges to give financial support to the accused. She also discloses that the accused will live in their Machakos home with her other son Martin Mwololo.
8. That information is confirmed by Martin Mwololo in his affidavit in support of the application.

9. The affidavit of Martin is however not signed by him and is therefore incompetent and accordingly disregarded.

10. The accused swore an affidavit indicating that he will be living in his home which is near that of his brother Martin, and that his mother and siblings will provide financial support to him.

11. Ms Njuguna, Learned Prosecution Counsel opposed the application. Counsels' main argument was that the issues raised by the State when opposing the first application for bail were still alive. Counsel urged that the accused was still a flight risk.

12. Ms Njuguna urged that the accused had seen the witnesses when they came for the hearing and so was likely to interfere with them.

13. I have considered the application by the accused to be released on bail pending his trial. I have considered issues conversed by both the defence and prosecution in this case.

14. My learned sister concluded that there was only one issue which the prosecution had proved, of the two raised by them. That was the issue of the accused being a flight risk. The issue of interference with witnesses cannot therefore arise at this stage of the proceedings.

15. To set the record straight it is not correct to say that delay in the hearing of this case has been caused squarely by the prosecution, the defence have played a role in causing one of the 3 adjournments so far made in the case.

16. Also to set the record straight, it is not correct to blame the accused of not being keen to have case heard just because he caused one of these adjournments. The way to look at it is if he advanced same grounds as he did last time to seek an adjournment, then, and only then can it be said that the reasons advanced to adjourn the case are flimsy.

17. In regard to being a flight risk, we have two affidavits showing the accused proposed place of abode, his own affidavit and that of his mother. We also have statements under oath pledging that the accused will be available for his trial as and when required.

18. From the supporting affidavit sworn by the accused and his mother, I noted:

a) It has been disclosed where the accused proposes to live so that if required and if he fails to appear in court it will be easy to trace him.

b) How he proposes to fend for himself or to sustain himself.

c) That his mother who is a close relative has come forward to vouch for the accused, that means that if he fails to turn up for his trial, there is a known person who can answer questions regarding his whereabouts and or how he can be found.

19. This case was filed in court on 14th July, 2015. It has been more than one year, nine months and no witness has testified. Issues of accused being a flight risk about 3 years ago cannot be used against him. This is more so as there is no fresh evidence to show he intends to jump bail and skip trial. The prosecution are relying on the fact police sought him for one year to arraign him in court.

20. Had the prosecution placed fresh and cogent evidence on a balance of probabilities to support such ground, then court may have been persuaded that there exists a risk that the accused may flee to avoid trial.

21. We have been told where he intends to live and how he intends to meet his daily needs. These are sufficient reasons to warrant the court to be inclined to grant bail.

22. Any fears of accused taking flight to avoid trial can be addressed by attaching conditions on bail terms that can take care of such a risk.

23. Having come to this conclusion, I will grant the accused bail on the following grounds:

- a) He may be released on a deposit of cash bail of KShs.250,000/= and one surety who shall be accused mother who will sign a bond of KShs.50,000/= without security.
- b) In the alternative to cash bail the accused may be released on a bond of KShs.500,000/= with 2 sureties one for KShs.500,000/= and the second surety who shall be the mother of the accused will sign a bond of KShs.50,000/= without security.
- c) The accused shall reside in Machakos County, Mutitani village and should not shift from that locality unless with express leave of the court.
- d) The accused should ensure he abides by these terms and is warned that if he defaults in any of them his bond will be cancelled.

DATED AT NAIROBI THIS 27TH DAY OF APRIL, 2017.

LESIIT, J

JUDGE