

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 68 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ADAM YUSUF alias MUINDE.....ACCUSED

RULING

Adam Yusuf alias Muinde, the accused, has moved this court through Notice Motion dated 10th March 2017 seeking to be admitted to bail pending the hearing and determination of this case. The application is supported by an affidavit sworn by the accused. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The accused has advanced grounds in support of his application that he is a Kenyan citizen resident of Kibera in Nairobi; that he is currently being held in custody awaiting this trial; that he is law abiding and will abide by the terms and conditions of bail that this court will set; that the offence is bailable; that he is not a flight risk and he will not interfere with investigations and that the prosecution has not advanced any compelling reasons to persuade this court to decline granting him bail.

The application is opposed by the prosecution basing that opposition on the replying affidavit sworn by CPL Paul Limo on 11th April 2017. The prosecution, through Ms Ikol prosecution counsel, has advanced the grounds that the accused has no fixed abode and is a flight risk; that the right to bail is not absolute and can be denied where compelling reasons exist; that the prosecution has irrefutable evidence that the accused committed this offence; that he knows the witnesses and may interfere with their evidence; that key witness in this case has been murdered and there is apprehension that other witnesses may be threatened and that the situation on the ground is volatile and accused's safety cannot be guaranteed. The prosecution urged the court not to release the accused on bond.

In response to the submissions by the prosecution Mr. Ochako for the accused told the court that the accused has a fixed place of abode in Kibera where he lives with his mother and siblings; that witnesses have recorded their statements and therefore there is no way the accused can interfere with them; that there has been no report to the police that the accused is threatening witnesses and that the accused is not in any danger. Mr. Ochako further submitted that the prosecution, by stating that there is overwhelming evidence against the accused, is creating an impression that the accused is guilty before the case is tried.

I have considered the application and the grounds in support as well as the response in opposition. The evidence against the accused is yet to be tested in court and therefore this court is not able at this stage to hold that the evidence is overwhelming as this would be prejudicial to the accused. I have considered submissions that the accused is likely to threaten witnesses. I have nothing concrete on that allegation. No witness has reported any threats to the police or any other government agency and therefore this court is not able to verify these allegations. On the allegation that the safety of the accused is not guaranteed, I will take the word of defence counsel that this is not the case.

The accused has not however given details of where he lives. I note that he says that he lives in Kibera. This is generalized. While I do not find any compelling reasons to persuade me to decline this application, it is my view that the accused should supply this court with his personal details of where he lives, his area Chief and Assistant Chief or Village Elder or Chairman of the local social grouping if any and what he does for a living. I will allow the application on the following terms:

(i) Accused shall execute a bond of one million Kenya shillings (Kshs 1,000,000) with one surety of similar amount.

(ii) In the alternative to (i) above, the accused shall deposit cash bail of Kenya shillings five hundred thousand (Kshs 500,000)

(iii) The accused shall supply to the court the particulars of where he resides, his area Chief and Assistant Chief and what he does for a living. If he is in gainful employment he shall supply details of his employer.

(iv) He shall abide by these terms and conditions without fail and shall not do an act or omit to do any act that may jeopardize this trial.

(v) He shall attend court at all times when he is required to do so until this case is heard and full determined.

Orders shall issue accordingly.

Dated, signed and dated this 25th April 2017.

S. N. Mutuku

Judge