

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 46 OF 2016

ERIC SALALI MUTISYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein was charged with murder contrary to section 203 as read with Section 204 of the Penal Code. It is alleged that on the 24th day of April, 2016 at Tulila area in Ikaalasa Location of Mwala Sub-County within Machakos County, he murdered Alphonse Mutisya Kimeu. The Applicant pleaded not guilty to the offence to the charge on 27th March 2017, whereupon Mr. Mukula, his Defence counsel, has made an oral application that the Applicant be released on affordable and reasonable bond terms. Ms Mogoi responded that there were compelling reasons to deny the Applicant bond, as he is a flight risk, and sought leave to file a replying affidavit within fourteen days.

The said replying affidavit was filed on 4th April 2017 and sworn by CI Joseph Muguna, the DCIO Mwala Sub-County CID Division. The said deponent averred that after the deceased was murdered on 26th April 2016, the Applicant knowing that he was the key suspect went into hiding until 15th December 2016, when he was arrested after a tip off by an informer.

Therefore, that the actions of the Applicant indicate that he is a flight risk and is likely to abscond if the Court releases him on bond. In addition, that the sentence of the death penalty applicable to murder charges is an incentive for the Applicant to abscond, and lastly, that having been supplied with the witness statements, there is a risk that he will interfere with the witnesses.

The Applicant had requested for and was granted leave to file a supplementary affidavit in response, but did not file any.

The issue that is before this Court for determination is whether the Applicant should be released on bail and/or bond and if so, on what terms. Article 49 (1) (h) of the Constitution permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. I find that a compelling reason has been shown by the prosecution, as the Applicant has not controverted the averments made that he did go into hiding after the deceased was killed. He is therefore a flight risk.

I accordingly decline to grant the Applicant bond as requested for the foregoing reason, and his application is dismissed.

It is so ordered.

DATED AT MACHAKOS THIS 3RD AUGUST 2017.

P. NYAMWEYA

JUDGE