



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 71 OF 2015

PATRICK MUTUA NZIOKAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was charged with murder contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on 25th May 2015 at Bondeni bar in Ikutani market, Kiou sub-location, Kwale location in Mukaa District within Makueni County, he murdered Kimilu N. Goloma. The Applicant pleaded not guilty to the offence and filed a Notice of Motion dated 28th September 2015 seeking to be released on bond/ bail as the Court may dim fit.

The Applicant's grounds for the application as stated in the said Notice of Motion and in his supporting affidavit of the same date, are that he is of fixed abode in Ikuutani in Makueni County and is a family man, and is therefore unlikely to abscond. Further, that his children are lacking paternal care and he is the only bread winner of his family. The Applicant sated that it is his constitutional right to be released on bond on reasonable terms pending trial, unless there exist compelling reasons which have not been shown in his case. The Applicant further averred that he will abide by the terms that the Court will give and will attend court and be available for trial. Further, that his relatives will make sure he adheres to the terms of the bond, and his application is not intended to interfere with witnesses.

The Prosecution did not file any response to the application despite being given opportunity to do so. I have considered the pleadings by the Applicant. 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. In the case of **Nganga vs Republic (1985) KLR 451**, the learned judge (Chesoni J. -as he then was) stated that in exercising its discretion to grant bail to an accused person under the Constitution and the relevant provisions of the Criminal Procedure Code, the court has to consider various factors as follows:-

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused there are a number of matters to be considered. Even without the constitutional provisions...generally in principle, and, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless it shown by the prosecution that there are substantial grounds for believing that:

- a. The accused will fail to turn up at his trial or to surrender to custody; or**

b. The accused may commit further offences; or

c. He will obstruct the courts of justice

...The primary purpose for bail is to secure the accused person's attendance at court to answer the charge at the specified time. "

The issue in this application then is whether there are compelling reasons why the Applicant should not be released on bail and if so, what are those compelling reasons and who carries the burden of satisfying the court with regard to the existence of such reasons. In **Republic –vs- Danson Ngunya & Another [2010] e KLR**, Makhandia J, (as he then was) stated that if the state wants the accused deprived of his right to be released on bond, then the State must satisfy the court that it would not be in the interest of justice to make an order granting bail/bond.

Since the prosecution has not shown any compelling reason as to why the Applicant should be denied bail, the Applicant's Notice of Motion dated 25th May 2015 is accordingly allowed and I admit the Applicant to bond pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/= with one surety of similar sum.
2. The surety for the Applicant will be approved by the Deputy Registrar of this court.
3. The Applicant will attend mentions before the Deputy Registrar of the High Court, Machakos once every month until the case is heard and determined.
4. The Applicant shall be required to attend court for the remainder of the trial without fail.
5. In default of orders 1, 2, 3, and 4 hereinabove, the bond shall be cancelled immediately and surety called to account.

It is so ordered.

DATED AT MACHAKOS THIS 22ND DAY OF MARCH 2016.

P. NYAMWEYA

JUDGE