



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CRIMINAL CASE NO. 7 OF 2016

REPUBLICPROSECUTOR

VERSUS

CHRISTOPHER MULEI MUTUAACCUSED

RULING

1. The applicant **CHRISTOPHER MULEI MUTUA** is charged with two counts of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on the night of 13th/14th January, 2015 at Pipeline Area in Embakasi within Nairobi County murdered **JACINTA NDINDA MUTUA** in count one and **JOY MUENI** in count two.
2. He pleaded not guilty to the said charges and on 1/2/2016 filed this application under the provision of **Articles 2(4), 49(1) (h) and 50(2) (a) and (b)** of the constitution of Kenya 2010 and **Section 123** of the Criminal Procedure Code to be admitted to bond pending trial and determination of the case.
3. The application was supported by an affidavit allegedly sworn by the accused person on 1/2/2016 before J.O Ochako advocate and two other affidavits sworn by **REUBEN MUTUA KISILU** his father and **CAROLINE MUENI MUTUA** his mother though stated as sister in which it was deponed that the applicant will attend court for all the hearing and mentions until the matter is concluded and that his father and sister are ready and willing to stand surety for him.
4. In opposing the application, the State through Inspector **JOHN KATHEU** one of the investigating officers swore an affidavit in reply and deponed that the applicant and the first deceased were involved in personal relationship and the accused took responsibility for the child Joy Mueni. On 14/1/2016 they received information that a possible killing had occurred in Pipeline Area in the house of the accused where the body of Jacinta Ndinda Mutua was found lying on the floor with blood oozing from the mouth while the lifeless body of the child Joy was lying on the bed.
5. It was deponed that the postmortem conducted on the said bodies revealed that the cause of death of Jacinta was head injury due to blunt force trauma while for Joy was asphyxiation due to manual strangulation. It was deponed further that the accused person immediately after the incident occurred disappeared and therefore there is a possibility of the same absconding if released on bond.
6. It was further deponed that the accused person knows the prosecution witnesses and is aware of where they reside and therefore there is a possibility that if he is released on bond the accused could inflict genuine fear and anxiety on them.

7. In compliance with the provisions of the Victims Protection Act and the Bail and Bond Policy Guidelines, the court ordered for a pre-bail report in which it was stated that the family of the victim expressed bitterness towards the accused and his family members and that the members of the community felt that it was too early for the accused to be amongst them and therefore granting bond will fuel animosity between them and the accused person and his family.

SUBMISSIONS

8. On behalf of the accused it was submitted that the accused is entitled to be released on bond since all murder trials take long to be determined, that the accused person suffers from allergies which cannot be managed in prison and that the State has not adduced any compelling reasons to deny the accused bail. It was submitted that the office of DPP has all machineries to counter interference with witnesses.

9. On behalf of the State it was submitted that there is fear of interference with witnesses since the two families know each other and the accused will be in contact with them. It was further submitted that there are adequate medical facilities in prison to deal with the accused person's allergies.

DETERMINATION

10. Bail is a constitutional right of every accused person limited only where there are compelling reasons to deny the same bond as per the provisions of **Article 49(1) (h)** of the **Constitution**. What amounts to compelling reasons has been left by the constitution to the discretion of the court even though the Judiciary has developed bail and bond policy guidelines thereon.

11. From the materials placed before the court, it is clear that the accused and the 1st deceased was in a relationship of husband and wife while the second deceased was their child. Given this close relationship between the accused person and possible prosecution witnesses it is clear to me that if released on bond the accused will be in contact with the said witnesses either physically or emotionally and having taken into account the provisions of **Section 10(1) (b)** of the **Victims Protection Act 2014** I am satisfied that there are adequate compelling reasons advanced by the State to enable the court deny the accused person his right to bail/bond at this stage.

12. In reaching this conclusion I am persuaded by the words of Justice F. Ochieng in **REPUBLIC v AHMED MOHAMMED OMAR & 6 OTHERS CRIMINAL CASE NO 14/2010** at Nairobi thus:-

“The applicant in this case is already aware of not only the names of the potential prosecution witnesses but he is already in possession of copies of the witness statements. To my mind, that fact alone, is reason enough to cause the civilian witnesses to have genuine fear, when they bear in mind the fact that the applicant would be moving around freely.....”

In **REPUBLIC v JOHN KAHINDI KARISA & 2 OTHERS (MSA) HCCR CASE NO. 23 of 2010**, Ibrahim J. noted that murder is a serious offence and attracts the death penalty. Self preservation is a natural reaction or response of any human being.

Whatever the court will decide the fear and anxiety existing on an accused mind during trial in a murder case cannot be ignored. The possibility of thinking of flight by an accused person facing a capital offence is real and cannot be wished away.”

13. I have juxtapositioned the above against the conduct of the accused after the commission of the offence even though the same is presumed to be innocent at this stage and find that there are compelling reasons to deny the applicant bail pending trial and therefore dismiss the application dated 1/2/2016.

Dated, signed and delivered at Nairobi this 19th day of May, 2016

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the state

Mr. Magero for Ratemo for the accused

Accused present

Tabitha court clerk