



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 110 OF 2015

REPUBLICPROSECUTOR

VERSUS

STANLEY KAMAU NTUMBIACCUSED

RULING

1. The applicant **STANLEY KAMAU NTUMBI** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on 24th November, 2014 at Maili Saba in Dandora within Nairobi County murdered **JOHN NJUGUNA KIMEMIA** to which he pleaded not guilty.
2. By a notice of motion dated 22/2/2016 under the provisions of articles 19, 20, 23 and 49 (1) (h) of the Constitution and Section 123 (3) of the Criminal Procedure Code applied to be admitted to reasonable bail terms pending trial which application was supported by an annexed affidavit of the applicant in which it was deponed that the applicant who is aged 20 years employed as a motor bike rider had been in custody since 3rd of December, 2015 and that the same was not a flight risk.
3. The application was opposed by the prosecution through an annexed affidavit sworn by PC Ongaga in which it was deponed that the accused had at all material times planned to use a knife on the deceased and had actually carried two knives on the material day and that the prosecution case against the applicant was overwhelming.
4. It was deponed that soon after the commission of the offence the applicant disappeared on the 24th November, 2014 and was only found on 23rd November, 2015 and that there was a real apprehension that the accused shall, if released on bond, interfere with witnesses.
5. To assist the court in making a just determination herein the court ordered for a pre-bail report dated 25/4/2015 in which it was stated that the accused did not proceed to secondary school due to lack of interest and engaged in casual jobs at construction sites in the area and was later enrolled for a mechanical course at a garage in Ongata Rongai town. His family members were willing to deposit a title deed with the court to ensure his court attendance.
6. On the victim assessment report it was submitted that the deceased was aged 21 years at the time of his death and that his family was still very bitter since the family of the accused who lives in the same neighbourhood with them had not made any attempt to talk to them. In conclusion it was stated that the accused may be a flight risk since he took off immediately after the offence.

DETERMINATION

7. Bail is now a Constitutional right of every accused person under Article 49(1)(h) of the Constitution and can only be limited where there are compelling reasons advanced by the state to

- enable the court deny the accused the enjoyment of the said right. The main consideration while granting an accused bond is whether or not the same shall attend to the hearing of the case.
8. Bond/bail policy guidelines issued by the Judiciary to guide the judicial officers in determining bond applications has set out compelling reasons to be considered some of which are:- The nature of the charge, the weight of the prosecution case against an applicant, the conduct of the applicant and whether the same is a flight risk.
 9. Mr. Chiuri for the applicant submitted before me that if the accused is granted bail the same will go back to Gatundu where he is a motor bike rider and does not intend to interfere with witnesses whereas Mr. Magoma for the State submitted that the witnesses the prosecution intends to call are well known to the accused who has been supplied with their witness statements.
 10. It must be pointed out that at the time of this ruling I had heard the evidence of three (3) prosecution witnesses and what has come out so far is that the accused and the deceased were staying in the same area and that those who are and shall be prosecution witnesses are well known to the accused persons having been with both the accused and the deceased.
 11. I have taken into account the ages of the intended witnesses from the evidence of PW3 and is of the considered view and hold that if released on bond at this stage, the accused presence is likely to lead to either direct or indirect interference with potential witnesses. I have also taken into account the conduct of the accused more in particular the fact that he disappeared and was at large for over one year.
 12. By reason of the matters stated herein, I find that the prosecution has advanced adequate compelling reasons to enable the court deny the accused his constitutional right to bond at this stage. The accused shall remain in custody and shall be at liberty to review his bond application once all the civilian witnesses from Dandora area have testified.

DATED, DELIVERED and SIGNED at Nairobi this 23rd day of June, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the state

Mr. Chiuri for the accused

Accused present

Tabitha court clerk