



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 72 OF 2015

PHILIP KING'OO MBITHI.....APPLICANT

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 23rd August 2015 at Mathangathi village, Mavindini location, within Makeni County, he murdered Muteti Kisavi. The Applicant pleaded not guilty to the offence. The Applicant subsequently filed an application by way of a Notice of Motion dated 31st March 2016 seeking to be admitted to bail/bond pending trial.

The Applicant urged his grounds for the application in the said Notice of Motion, and a supporting affidavit of the same date. The grounds are that he is presumed innocent until found guilty, and that there are no compelling reasons not to release him on bond/bail. The Applicant in addition undertook to abide by the terms and conditions that may be imposed by this Court.

The Prosecution opposed the Applicant's application in a replying affidavit sworn on 26th May 2016 by PC James Jumah Omondi, a police constable currently attached to IC3 Jogoo House, and one of the investigating officers in this criminal case. The deponent stated that if the Applicant is released he may target the witnesses, since some of the witnesses are his relatives and are well known to him. It was further argued by the prosecution that the Applicant's life may also be in danger if he is released. Lastly, that and considering the severity of the sentence provided by law for the offence of murder, which is the death penalty, this may be an incentive for the Applicant to abscond and is thus a compelling reason to deny him bail.

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. The issue in this application 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.

The Prosecution in this regard has argued that the Applicant may interfere with the witnesses some of

whom are his relatives. No particulars or details of these witnesses and their relation with the Applicant were given by the prosecution. The Court is therefore not in a position to appreciate the nature of familial or physical proximity that exists between the Applicant and the alleged witnesses, and whether the Applicant will thereby be in a position to influence or in any other manner interfere with the said witnesses. It is also the responsibility of the State to provide security to its citizens, and the safety of the Applicant if released on bond/bail cannot be put forward by the State as a compelling reason.

The Applicant's Notice of Motion dated 31st March 2016 is accordingly allowed as no compelling reason has been shown to deny him bail/bond. I accordingly admit the Applicant to bail pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 350,000/= with two sureties of similar sum.
2. The sureties 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 sureties called to account.

It is so ordered.

DATED AT MACHAKOS THIS 22ND JUNE 2016.

P. NYAMWEYA

JUDGE