



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 16 OF 2016
REPUBLIC.....RESPONDENT
VERSUS
FRANCIS MAINA.....ACCUSED

RULING

1. The Applicant **FRANCIS MAINA** faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal code the particulars of which were that on 6/2/2016 at Gachie village in Kihara location within Kiambu County murdered **JAMES MBUGUA GITAU**.
2. He pleaded not guilty and by a Notice of Motion dated 24/2/2016 under the provisions of Article 49(1)(h) of the Constitution and Section 123 of Criminal Procedure Code applied to be released on bond/bail pending trial on reasonable and unfavourable terms, which application was grounded on the grounds that the applicant has a young child born on 18/2/2016 and is the sole breadwinner to his family which include his terminally ill mother.
3. The application was supported by an annexed affidavit sworn by the applicant in which it was deponed that he is a 20 year old young man who was working as a conductor with Ganaki Sacco along Gachie, married to one Judy Wangari and a father of a baby girl born on 18/2/2016. It was deponed further that the applicant is the sole breadwinner for his younger family and also provides for his mother P W K who is terminally ill with HIV AIDS together with his two young siblings aged 6 and 3 years respectively who risk being rendered homeless.
4. In opposition to the said application the prosecution through **GIBSON GITONGA** of Karuri police Station filed an affidavit in which it was deponed that the accused together with another person allegedly stabbed the deceased who died while in hospital. It was stated that immediately thereafter the accused relocated to unknown place before being arrested by members of the public.
5. It was deponed that there was real apprehension that the accused if released on bond will interfere with witnesses whose statements are already in his possession and further that the accused is likely to abscond since the offence he is facing is very serious.
6. In compliance with the provision of Witness Protection Act and the Bond/Bail Policy Guidelines the court ordered for a pre-bail report in which it was stated that the applicant was raised by his grandmother after his parents separated and attained class eight (8) level of education. It was stated that soon after the commission of the offence the wife of the accused relocated back to her parents home since it was the accused who was the family's sole breadwinner.
7. It was further stated that at the time of the said report the officer had not managed to interview the family members of the deceased, whereas the mother of the accused, a single parent living with HIV/AIDS supported the release of the accused on bond to enable him to take care of the family.

SUBMISSIONS

8. When the matter came up for hearing before me, Mr. Wakaba appeared for the accused and submitted that the purpose of bond is for the accused person to avail himself throughout the trial. He submitted that the prosecution had not provided compelling reasons to enable the court deny the accused his Constitutional Right to bail and that from the committal bundles supplied to the accused the available evidence against the accused are from those who were allegedly with the accused person at the time of the alleged commission of the offence and were only released when they implicated the accused person and therefore there is no likelihood of the accused interfering with them. It was submitted that the pre-bail report was favourable to the accused person.
9. Mr. Magoma for the State submitted that the State had a strong case against the accused who should therefore not be released on bond.

DETERMINATION

10. Bond is a Constitutional Right of every accused person under the provision of Article 49(1)(h) and can only be denied where there are compelling reasons which compelling reasons must be provided by the State on a balance of probabilities.
11. In this matter, the State by an affidavit sworn by **GIBSON GITONGA** stated herein has stated that there is likelihood of the accused interfering with witnesses but I note that the nature of the interference and the witnesses likely to be interfered with has not been stated. It must be noted that for the court to limit the enjoyment of Constitutional Right granted to the accused person, the State is under a duty to provide enough material which include but not limited to the nature of the interference, the identity of the witnesses likely to be interfered with and whether the State cannot stop the intended interference.
12. In this matter before the court, whereas a life has been lost, the accused is at this stage considered innocent and must enjoy all the Constitutional Rights guaranteed in the Constitution unless adequate compelling reasons are advanced. The State in this matter has failed to provide any compelling reasons to enable the court to deny the applicant his Constitutional Right.
13. The accused faces a charge where the only available sentence upon conviction is death and having noted through the pre-bail report that he is the sole bread winner of his young family of a wife and a child and that his said wife has taken off with the child upon the arrest of the accused, I am of the considered view and find that this is a case where the accused ought to be released on bond to enable him put his house in order and to enjoy the company of his child aged two months since the outcome of this trial is uncertain and chances are that the accused might not be there for them for a long time if convicted.
14. I therefore find merit on the application herein and taking into account that since the accused is staring at the possibility of a death sentence upon conviction and having noted that there is a human being who also lost his life and whose family are also entitled to have faith in the judicial system, I order that the accused be released on bond on the following terms and conditions:-
 - a. **Bond of Kshs.1,000,000/- with one surety of similar amount.**
 - b. **In the alternative cash bail of Kshs.200,000/- together with a surety of similar amount.**
 - c. **The accused to report to the officer commanding KARURI POLICE STATION immediately upon his release and to be reporting to the said office once after every thirty (30) days with the first of such report being on the 15th day of July, 2016 and thereafter at dates to be set by the said officer in addition to reporting to the Deputy Registrar of the High Court of Kenya at Kiambu once after every sixty (60) days until the determination of this case.**

DATED, DELIVERED and SIGNED at Nairobi this 16th day of June, 2016.

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the State

Kamanda for Mbiu Kamau for the accused

Accused present

Tabitha court clerk