



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 76 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BAKARI OUNDO OUKO.....ACCUSED**

**RULING**

Bakari Oundo Ouko is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that he committed that offence jointly with others not before the Court on the night of 14<sup>th</sup> and 15<sup>th</sup> October 2016 at Mathare 4A in Nairobi within Nairobi County. The victim is Patrick Omondi.

He brought this application dated 5<sup>th</sup> December 2016 under a certificate of urgency. The grounds in support of the application are found on the face of it and in the supporting affidavit sworn by Mr. Denis Anyoka Moturi, Advocate for the applicant.

The grounds in support of the application are that the accused has a right to bail enshrined in the Constitution; that he is not a flight risk and will turn up in court whenever called upon to do so; that he is the sole bread winner; that he will not interfere with witnesses; that he is innocent until the contrary is proved; that he is sickly and the harsh conditions in remand prison will cause his condition to deteriorate; that he will abide by the terms and conditions of bail set by the court and that he has relatives ready and willing to stand surety for him.

In his submissions to court Mr. Anyoka reiterated the grounds in support of the application and informed the court that the accused comes from Nyangoma in Nyando and works as a mechanic on Kirinyaga Road Nairobi. Counsel also cited two authorities in support of this application and told the court that these are in the bundle of authorities filed in court. I have not found any filed authorities. However, this court is alert to the applicable principles in determining bail applications and will take the same into consideration.

The application is opposed. There is however no replying affidavit. The Prosecution Counsel told the court that the accused is a flight risk because he went into hiding after the offence and was not found until the time of his arrest; that the accused has no fixed abode and that a probation report was needed to confirm his place of residence. Counsel further submitted that the life of the accused will be in danger if released on bond because his house was burned down by members of public after this incident. The Prosecution Counsel did not explain why there is no replying affidavit given that on 15<sup>th</sup> December 2016 she had informed the court that she needed time to prepare the affidavit and this was granted.

I have considered this application. The right of an accused person to bail is not absolute and can be limited where compelling reasons are proved on a balance of probabilities. The onus of proving compelling reasons is on the prosecution. Save from evidence from the bar that the accused is a flight risk, has no fixed abode and that his life may be endangered by releasing him from custody, this court does not have evidence to support this. The Investigating Officer or any other Officer in conduct of this case did not file an affidavit to verify these allegations. It is not enough to state that the accused is a flight risk. It is stated that he went into hiding after the offence but as stated there is no evidence in support of this. My conclusion of the matter is that the prosecution has not provided this court with compelling reasons why the accused should not be admitted to bail. As a consequence of that failure this court has not

reason to decline this application, which I hereby allow. In admitting the accused to bail this court will set conditions that he must meet before he can be released. The accused shall fulfill the following conditions before he can be released on bail:

- (i) The accused shall execute a bond of Kshs 2,000,000 with one surety of similar amount.
- (ii) Alternatively, the accused is at liberty to deposit cash bail of Kshs 700,000 with the Registrar of this Court.
- (iii) He shall attend court when required to do so until this case is heard and determined.
- (iv) He shall not conduct himself in any manner that may amount to subversion of justice in this case.

Orders shall issue accordingly.

**Dated, signed and delivered this 22<sup>nd</sup> day of December 2016.**

**S. N. Mutuku**

**Judge**