

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 85 OF 2013

MUSA ADIKA.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

In the application dated 23rd February 2015 and brought under Articles 49 (1) and 50 of the Constitution and Sections 123, 124 and 125 of the Criminal Procedure Code, the applicant seeks to be admitted to bail pending the hearing and determination of this case. By the time the application was filed, the court had heard five prosecution witnesses and at the time of canvassing the application a total of eight witnesses had testified. The court has been informed that another five witnesses are yet to testify.

The application is supported by grounds found on the face of the application and those found on the supporting affidavit. Counsel for the accused Ms Celyne Odembo amplified the grounds during the hearing of this application that the accused's right to liberty has been infringed by his continued stay in custody; that murder is a bailable offence under the constitution; that bail can be applied at any stage of the hearing; that the accused is innocent until the contrary is proved; that the applicant is ready and willing to attend court until this case is finalized; that no compelling reasons have been advanced; that he is a father of three children and is ailing with kidney, chest, ulcers and hypertension problems that requires treatment away from custody and that he is not a flight risk;.

The application was opposed by Ms Macharia prosecuting counsel. She relied on the replying affidavit sworn by Police Constable Oreu Ngelechei who has deposed that the deceased was reported missing on 24th December 2012 and his body found on 28th December 2012; that the accused was arrested in Webuye in possession of Motor Vehicle No. KBR 440Z belonging to the deceased; that the offence was committed in Nairobi and for the accused to be arrested in Webuye shows the accused has no fixed abode and therefore a flight risk; that the accused is also being investigated by the Special Crimes Prevention Unit in Inquiry No. 1/2010 with regard to the disappearance of one Kenneth Isiongo Shikoli; that the accused has changed his name from Ezekiel Kibuko Adika to Musa Adika Mudavila after converting into Islam; that the accused knows the civilian prosecution witnesses and is likely to interfere with them. Counsel asked the court to decline to allow the application.

I have considered the application and rival submissions. Bail is a constitutional right and an accused person facing a murder charge can enjoy this right just like any other accused facing a minor criminal charge. This right however is not absolute and the court hearing the matter has discretion to allow or to decline to allow the application where there are compelling reasons to do so.

I have considered that the accused is sickly according to the documents he has attached to the application including a report this court called for from Remand Home where the accused is being held in custody. His ailment is however being handled well both in the prison health facility as well as Kenyatta National Hospital.

I have considered that the case is advanced and the next hearing date is scheduled for 21st and 22nd April 2015. It is expected the remaining witnesses will conclude evidence for the prosecution. I have also considered that the accused is facing investigations in respect of another case involving alleged disappearance of another person although prosecution did not give further details on this matter. While

these investigations remain allegations of accused's involvement it is the view of this court that taking into account the fact that this case is quite advanced and has been given a date in a month's time, this court will and does hereby decline to grant the application. The State is urged to ensure all the remaining witnesses attend court and testify on 21st and 22nd April 2015 in order to finalize this matter. In the meantime the accused will remain in custody and his medical needs shall be catered for both in the prison health facility and at Kenyatta National Hospital when his condition cannot be properly handled at the prison. Orders are made accordingly.

Dated, signed and delivered this 26th day of March 2015.

S.N.MUTUKU

JUDGE