



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 16 OF 2012

JAMES MULU MULEWA... ..APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

James Mulu Mulewa (the accused) is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 27th February 2012 at **Mathare North** in **Nairobi County** murdered **Mercy Muthethya Ngali**. He was first arraigned in court on 8th March 2012 for plea and he pleaded not guilty. His trial commenced on 26th March 2013. The trial has however been dogged by several adjournments occasioned by frequent change of defence counsel and challenges faced by the prosecution to secure exhibits from the Government Analyst.

The accused has now applied for bail on the grounds that he has a strong defence; that he has been in custody long; and, that he has a medical (skin) condition requiring treatment. These grounds are contained in the supporting affidavit of the applicant who also deposes that he shall attend his trial to its logical conclusion.

The application is opposed by the State through the Replying Affidavit of **PC. Samuel Omondi** of Muthaiga Police Station. PC. Omondi deposes in his affidavit that the State fears that the accused may interfere with witnesses if released. Two of the witnesses are said to be close neighbours of the accused. In opposing bail too the investigating officer has blamed the defence for delaying the trial through change of defence counsel.

At the hearing of the application, **Mr. Wachira**, the learned defence counsel urged the court to grant bail stating that the applicant would not interfere with prosecution witnesses. He submitted that the accused had a strong defence and that the evidence adduced in the trial so far does not disclose malice aforethought to support a charge of murder. He further submitted that the accused was not a flight risk and would not interfere with prosecution witnesses and shall abide by any bond terms. In sum, counsel submitted that there were no compelling reasons to deny the applicant bail.

In opposing submissions **Mr. Miiri**, learned prosecution counsel urged the court to consider that the matter is already part-heard that there is strong evidence on record tendered by prosecution witnesses; and that the applicant faced with the possibility of a conviction was likely to abscond trial. He submitted that two of the remaining witnesses were close neighbours of the applicant.

In considering this application, I am guided by **Article 49 (i) h of the Constitution** which entitles an accused to bail unless there are compelling reasons. I am also guided by the principle that an accused

may be granted bail at any stage of the proceedings.

In this case, the prosecution has opposed bail on grounds that the applicant was likely to interfere with prosecution witnesses. After a careful consideration of the Replying Affidavit and oral submissions on this issue, I am not persuaded that the fear so expressed by the prosecution is real. No attempt was made to show the court which specific witnesses were vulnerable to the accused's influence that would jeopardize their testimony in court.

The second ground raised by the respondent is that the case was part-heard and that the applicant may be tempted to abscond in view of the evidence on record. I have perused the record. It is true that so far two prosecution witnesses have testified with four remaining. However, I cannot at this stage comment on the evidence on record. Suffice to state that I have considered the circumstances of the case and I am persuaded that this is a matter which can be concluded expeditiously. I hold the view that the interests of justice shall be served in bringing the trial to a speedy conclusion rather than the release of the applicant on bail. I further observe that the case is scheduled for further hearing on 25th May and 2nd June 2015.

I direct the prosecution to present all the outstanding witnesses on the two days.

The application is thus dismissed.

Ruling delivered and dated at Nairobi this 24th day of April, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For State

.....: For Accused/Applicant