



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.6 OF 2015

ISAAC KARIUKI MURONG'A.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Isaac Kariuki Murong'a (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 25th/26th December 2014 at **Umoja Innercore Estate** within **Nairobi County** murdered **Purity Gacheri Gikundi**. He was first arraigned in court on 13th January 2015 for plea and he pleaded not guilty. The trial is yet to commence.

The accused has now filed an application seeking to be released on bail pending trial. In the application filed on 12th February 2015, he states that the deceased was his wife and that he shall attend court for his trial; that he is a Kenyan citizen who resides in Umoja Innercore and was gainfully employed as a caretaker of two blocks of apartments in Umoja and Kasarani respectively; that his parents are peasant farmers who reside in Kiambu County and are willing to stand surety for him.

During the hearing of the application on 16th March, 2015 **Mr. Wamwayi** for the accused submitted that the application was not opposed and that the applicant surrendered himself to the police immediately after the incident and had no intention of not attending his trial. **Mr. Okeyo** for the state, while admitting that the state had not filed a replying affidavit in opposition, submitted that there were compelling reasons why the applicant should be denied bail. He stated that the witnesses in the case were close neighbours of the accused and may be intimidated if the accused was released on bail. He urged the court to consider that the incident took place in the accused's neighbour's house and find that it would be in the interest of justice for the applicant to remain in custody until the witnesses have testified.

In considering this application, I note that the accused was arraigned in court on 20th January 2014 and that he filed his application on 18th February 2015. All the while, the prosecution did not raise an objection to his release on bail. At the hearing of the application on 16th March 2015, prosecution counsel opted to make oral submissions opposing bail for fear that witnesses were likely to be intimidated. Other than so stating, prosecution counsel did not endeavor to demonstrate to the court which witnesses were affected or the nature of the relationship between the witnesses and the accused which would show the likelihood of their being intimidated. Without factual information presented before the court, I am unable to find that the witnesses referred to by the prosecution were likely to be intimidated by the accused. The fears expressed by the prosecution counsel remain merely speculative.

Article 49(i) (h) of the **Constitution** grants an accused person the right to bail unless there are

compelling reasons not to be released. In this case, and as indicated above, the prosecution has not demonstrated to the court any compelling reason why the accused should be denied bail. It has merely mentioned that some witnesses who were neighbours to the accused were likely to be intimidated. The court notes from the accused's own application that the accused and the deceased cohabited as husband and wife. It has not been indicated to the court whether any of the prosecution witnesses were family members.

In the premises, I allow the application on condition that the accused shall:-

- (i) Execute a personal bond of one million shillings (Kshs.1,000,000/-) with two sureties of KShs.1,000,000 each.
- (ii) Not interfere with the prosecution witnesses and any such interference shall lead to the automatic cancellation of this bond.
- (iii) Attend court for the mention of his case once every month before the Deputy Registrar until the commencement of his trial. The first of such mention shall be on 18th June, 2015

It is so ordered.

Ruling delivered, dated and signed at Nairobi this 18th day of May , 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk
.....: Accused/Applicant
.....: For State
.....: For Accused/Applicant