



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 47 OF 2014

MOSES MUTEGI KARWANDA.....APPLICANT

VS

REPUBLIC.....RESPONDENT

RULING

Before me is a Notice of Motion Application brought pursuant to the provisions Article 49 (h) of the Constitution of Kenya and Section 123 (3) of the Criminal Procedure Code where the Applicant seeks to be admitted to bail pending trial on such terms as the court may deem necessary in the interest of justice.

The gist of the application is that the applicant has a constitutional right to bail pending trial; that the applicant will abide by the terms of the bail; that he will turn up whenever required and that the applicant will be of good conduct during the period of bail.

The application was opposed. Mr. Musyoka Learned State Counsel sought to rely entirely on an affidavit sworn by Corporal Moses Nyota, the investigating officer in this case, who deposed *inter alia* that key prosecution witnesses are neighbours with the applicant and if released on bail, the applicant is likely to interfere with the said witnesses thus defeating the cause of justice; that if he is released on bail/bond, there is a high possibility of the applicant absconding in view of the severity of the potential sentence he is facing upon conviction; that the family of the victim/deceased, especially the minor who was with the deceased at the time he was murdered in cold blood, need time to heal given that the offence was committed fairly recently.

It was contended by Mr. Mwenda for the applicant that the applicant is a Kenyan citizen, married, with children with fixed abode and that the applicant will turn up for trial and will not interfere with witnesses; that the replying affidavit by the investigations officer does not disclose any compelling reasons as to why the applicant should be denied bond; that there was nothing to support the allegations that the applicant will interfere with witnesses

The court called for a pre bail report in respect of the applicant. According to the report filed in court on 19th June 2015, the applicant is described as peaceful person, very active in community development activities and all the community members interviewed were receptive of the applicant being released on bond save for the victim's son who was said to be bitter.

I have considered this application, submissions by counsels, investigating officer's affidavit and the pre bail report. The right to bond is not absolute as bond will be denied if it is demonstrated that there are compelling reasons to deny accused bond. In such an application, the court has to consider first, whether

the accused will turn up for this trial; whether he will interfere with witnesses; whether his personal security will be guaranteed and of course, the court has to consider his antecedents and previous character.

In this case, though it was alleged by the prosecution that the prosecution witnesses were neighbours and that if released on bail there are high chances of the applicant interfering with them, it was not possible to ascertain the same since copies of witness statements were not available and there was no evidence in support of that allegation.

Considering all the above and the pre bail report which was positive on accused's character, the fact that he has a fixed abode and not a flight risk, I am satisfied that there are no compelling reasons not to grant the applicant bail/bond. In the circumstances, the applicant may be released on bond of KShs.400, 000/ = plus a surety of the same amount. The applicant is required to be of good conduct during this period and should not interfere with prosecution witnesses' failure to which the bail/bond shall be cancelled.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JUNE, 2015.

R. P. V. WENDOH

JUDGE

PRESENT

Mr. Mungai for State

Faith/Ibrahim – Court Assistant

Mr. Murango for Accused

Accused, Present