



IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 20 OF 2013

REPUBLIC PROSECUTOR

VERSUS

SAMWEL MAINA WANJIKU.....ACCUSED

RULING

1. The Accused herein, **Samuel Maina Wanjiku**, is charged with **murder** contrary to **section 203** as read with **section 204** of the *Penal Code*. It is alleged in the information dated 31st December 2013 that in the night of 19th and 20th December 2013 at *Gathaihi Village* in *Murang'a South District* within *Murang'a County*, jointly with others not before the court, he murdered one **Daniel Kamau Kiiru**. He pleaded not guilty and is awaiting his trial, which is scheduled to commence on 29th September 2015.

2. By his **notice of motion dated 24/02/2015** in the meantime, he has applied to be admitted to bail pending his trial. The Republic has opposed the application by a **replying affidavit filed on 25/02/2015** which is sworn by one **Obadiah Kariuki Kiiru (Obadiah)**.

3. Bail is a constitutional right for any offence whatsoever, and will be denied only for **compelling reason**. Any conditions imposed for such bail must be **reasonable**. See **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

4. The deponent of the replying affidavit, Obadiah, had described himself as a

“...victim of the offence as the deceased in this matter...Daniel Kamau Kiiru is my brother...”.

Perusal of the witness statements supplied to the court and the defence show that Obadiah is also a witness for the prosecution in the case. The investigating officer of the case has not sworn any replying affidavit.

5. The reasons for opposing bail appearing in the replying affidavit are –

(i) That there are suspects in the case who are still at large who have been “*in constant communication with the accused person and have been threatening witnesses in the case*” – namely himself and his brother Nelson Njuguna.

(ii) That the Accused, though in custody, still manages to make threatening calls to him and his family “*using a blocked number*”.

(iii) That the Accused has also been making threatening calls to his own wife for

leaving the matrimonial home.

(iv) That he (Obadiah) made a report of the threatening calls to ***Kaganda AP Post*** but that the police were unable to “*initiate action as the mobile number the accused uses to call is withheld/blocked*”.

(v) That he (Obadiah) also informed the investigating officer of the case about the threats.

(vi) That the “*community is still furious with the Accused person*” and that therefore it is not prudent for him to be released back into the community.

(vii) That the Accused “*is a dangerous man, highly likely to interfere with the witnesses and go into hiding like his accomplices....*”.

6. Apart from Obadiah’s say-so, there is no independent evidence of the alleged threatening calls to witnesses, say, a report from the service provider. There is also no evidence of any difficulty the police may have had in apprehending the other suspects in the case, and the Accused’s alleged hand in such difficulty. Finally, there is no evidence of Obadiah’s report to the police, or to the investigating officer specifically, about the alleged mobile phone threats by the Accused to witnesses.

7. As already pointed out, bail is a constitutional right that will be denied only for compelling reason. I find no such compelling reason disclosed in the replying affidavit.

8. I will therefore admit the Accused to bail pending his trial. He shall be released upon his own cognizance in the sum of KShs 100,000/00 plus one surety in like sum. It is so ordered.

DATED AND SIGNED AT MURANG’A THIS 8TH DAY OF JUNE 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG’A THIS 12TH DAY OF JUNE 2015