

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.17 OF 2015

CARL GARY SINGLETON.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Carl Gary Singleton** is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. He is alleged to have murdered one **Peris Ashley Agumbi** on 19th November 2014 at Neptune Shelder Estate in Nairobi County. He took plea on 5th March 2015 when he denied the charge and was remanded in custody. On 18th February 2015 the accused made an application to be released on bail pending trial. It was heard on 18th March 2015. Vide a reasoned ruling dated 11th May 2015 the court declined to grant bail.

The accused subsequently filed a review application on 18th June 2015. After a careful consideration of the review application, the court granted the accused bail on condition that he makes a cash bail of 1 million shillings with 2 Kenyan Sureties of Kshs.1 million each; deposits his passport with the court; and, attends monthly mentions until the trial commences.

On 19th August 2015, the accused made an application seeking to have the bail terms reviewed. In oral submissions before court, his counsel **Mr. Okulo** told the court that the accused was unable to find any Kenyan sureties as he had no relatives or friends in Kenya. He asked the court to remove the condition on sureties stating that the accused was not a flight risk. He drew the attention of the court to the fact that the accused was a British citizen and that there exists an extradition treaty between Kenya and Britain. On her part learned prosecution counsel, **Ms. Matiru** opposed the application arguing that the accused may take flight if there were no Kenyan sureties.

I have considered the application. As stated in my earlier rulings in this mater, the accused person is entitled to bail under Article 49 of the Constitution. The primary purpose of bail however is to secure the accused's attendance at trial. See **Watoro Vs. Republic 1991 KLR 220; Republic Vs Danson Mgunya & Another 2010 eKLR**. An accused person's attendance at trial is critical in the administration of criminal justice for without an accused standing trial, the state, the complainant, victims of crime and the public would never know whether an accused was guilty of an alleged offence or not.

Where the court grants bail or bond to an accused, it seeks to ensure that he attends trial and may in that endeavour impose a condition that such accused avails a surety or sureties. The role of sureties in ensuring the accused's attendance cannot be overstated. Their role is to assist the court ensure that a suspect or accused appears in court when so required. (See generally Section 123-125 Criminal Procedure Code). The Bail & Bond policy [2015] defines a surety as "*a person who undertakes to ensure that an accused person will appear in court and abide by bail conditions*" It further defines the function thus "*the surety puts up security, such as money or title to a property, which can be forfeited to the court if the accused person fails to appear in court*".

The right to bail under **Article 49(i) (h) of the Constitution** is not an absolute right. It is circumscribed by the existence of compelling reasons. The determination of what amounts to compelling reasons however has been left to the discretion of the court. The judicial discretion allowed by **Article 49(i) (h)** extends to what bail or bond terms to impose. Section 124 of the Criminal Procedure Code acknowledges

this discretion as it provides that the court may impose any bond terms that it deems sufficient.

In the present case, the accused has asked the court to do away with the condition that he provides Kenyan sureties. It has been argued on behalf of the accused that the accused was a British national and that there exists an extradition treaty between Kenya and Britain. It is my considered view however that the existence of such a treaty does not in any way minimize the risk of flight if an accused wished to evade trial. I take judicial notice that in practice extradition procedures and processes are lengthy and costly. They may also necessarily delay a trial. I am therefore persuaded, taking all factors into consideration in this case, that it would be in the interests of justice to maintain the condition on sureties to ensure the accused's attendance at trial. Consequently, I am disinclined to grant the application. It is not merited.

In conclusion, I observe that the matter has trial dates for 4th & 5th November 2015. I direct the prosecution to present its witnesses on those dates for the trial to proceed expeditiously.

Ruling delivered, dated and signed at Nairobi this 22nd day of September, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....:	Court clerk
.....:	Accused
.....:	For the accused
.....:	For the State