

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 55 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

GODFREY MUCHANJI OJIAMBO.....ACCUSED

RULING

Godfrey Muchanji Ojiambo, the accused, is charged with the murder of Eunice Omenda Matanga contrary to section 203 as read with section 204 of the Penal Code. The murder is alleged to have been committed on 17th May 2015 at Kibera Highrise in Lang'ata within Nairobi County. The accused has pleaded not guilty and the case has been fixed for hearing on 18th, 19th and 20th January 2016. The accused is remanded in custody and has approached this court seeking to be admitted to bail pending the hearing and determination of this case.

In his Notice of Motion dated 6th October 2015 and filed on the same day, the accused has, through his counsel Mr. Masara, asked the court to release him from custody pending the hearing and determination of this case. He has advanced the grounds in support of this application on the face of the application and on the supporting affidavit sworn on 6th October 2015. He says he is a Kenya citizen working as a subcontractor on wiring contracts; that he resides in Kibera Highrise in Nairobi and has 7 children who go to school in Nairobi; that his father, sister and brother reside in Nairobi and are prepared to be his contact persons; that he is not a flight risk and that there are no compelling reasons to deny him bail.

In his brief address to the court, Mr. Masara submitted that this court has discretion to allow this application; that it is not true that the accused has no fixed abode and that it is not true that the accused has threatened to kill his parents because the accused does not have parents since they are deceased. Counsel further submitted that it is not true that the accused was accosted by members of public because the accused presented himself to the police and that he is a suspect at this stage of the trial and should be treated as one.

The application is opposed. The grounds in opposition are that the accused does not have fixed abode; that the house he was living in belonged to the deceased; that there is likelihood that the accused will abscond if released on bond; that the safety of the accused may not be guaranteed because of hostile neighbours at his former place of abode.

This court called for a pre-bail report before making its decision. The report was filed on 3rd December 2015. I have read the report. It shows that the accused has family in Kibera and his biological father Christiano Muchanji Ojiambo lives in Nyayo Highrise but his biological mother is deceased. The report does not clearly state that the accused has a home in Kibera. It however shows the deceased owned some rental houses there. The report also shows that the local administration at Kibera Highrise where this offence took place are fearful that safety of the accused cannot be guaranteed since the public still remember the incident and have been hostile towards the accused.

I have considered this matter. Mr. Masara who has been instructed by the accused told the court that the accused does not have living parents. This is unfortunate. The report shows he has a father Christiano Muchanji Ojiambo and a step mother. His biological mother is deceased. Why did the accused lie to his advocate? I have perused the statements in the bundle and I confirm reading a statement of one Christiano Muchanji Ojiambo who says he is the father of the accused.

Although I find no risk of interference with witnesses, I am concerned about the sincerity of the accused and doubt whether someone who is capable of lying about his parents on a matter regarding their being alive will present himself in court when required to do so. For this reason and the reason his safety may not be guaranteed due to the hostile neighbours in Kibera, I feel that this may not be a good case to admit accused to bail. Although he says he will live in Funyula, Busia, if released on bond it is my view that with business contacts in Nairobi the accused may not resist the urge to come to Nairobi. I am inclined to deny the accused bail. The application dated 6th October 2015 is hereby declined. The hearing dates are almost a month away and given that there are three days given for hearing it is likely that the matter will be concluded. The accused shall remain in custody until the case is heard and finalized. Orders shall issue accordingly.

Dated, signed and delivered this 7th December 2015.

S. N. MUTUKU

JUDGE

In the presence of:

Miss Ochieng for the prosecution

Mr. Masara for the accused

Mr. Godfrey Muchanji Ojiambo the accused

Mr. Daniel Ngumbi, court clerk