



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.100 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

GODFREY OCHIENG ODALO.....APPLICANT

RULING

Godfrey Ochieng Odalo is facing trial for the murder of Martha Awino. He is alleged to have committed the offence on 29th November 2012 at Raila Decanting Site in Langata District within Nairobi County. He has filed an application to be released on bail pending trial.

In his application dated 26th April 2013 the accused states that he has an unqualified right to be presumed innocent until proved guilty; that he has a qualified constitutional right to bail and that he will avail himself for trial.

The application is contested by the State vide the Replying affidavit sworn by Inspector of Police Denis Omuko and oral submissions before court advanced by prosecuting counsel **Ms Ikol**.

It is the State's position that the accused is likely to interfere with a key witness. The witness in question according to various averments in the Replying Affidavit is a child of tender years who witnessed the alleged murder. In submissions before court, **Ms Ikol** informed the court that the accused and the deceased were living together as husband and wife and that the minor who is the child of the deceased witnessed the accused strangling the deceased.

Mr. Kithinji for the applicant while admitting the existence of such a vulnerable witness submitted before court that the witness now resides in Kisumu while the applicant resides in Nairobi and that therefore there will be no possibility of the two being in contact.

I have considered the rival affidavits and submissions by the respective counsel. I have also considered the pre-bail report filed as directed by the court. The constitutional basis of the application is not contestable. The accused is entitled to bail notwithstanding the seriousness of the offence. The right under **Article 49 (i) h of the Constitution** however may be curtailed by the court where there are compelling reasons. I am persuaded that in the circumstances of this particular case, the accused is likely to interfere with the minor witness. It is desirable that the testimony of the vulnerable minor witness is secured and that the likelihood of interference is minimized. I find this to be a compelling reason not to admit the accused to bail

The application dated 2nd May 2014 is dismissed.

Ruling delivered, dated and signed at Nairobi this 27th day of February, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the applicant

.....: For the State/respondent