



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.54 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

STEPHEN KIMANI KAMAU.....APPLICANT

RULING

1. **Stephen Kimani Kamau** is accused of the murder of his wife, one **Regina Wanjiku Kimani**. According to the information filed by the Director of Public Prosecutions, he is said to have committed the offence on 12th July 2012 at their Gatukuyu home in Gatundu District, Kiambu County. The accused was first arraigned in court on 24th July 2012. He has been in custody since the time of his arrest.
2. The accused now seeks to be released on bail pending his trial which is yet to commence. In his application dated 24th July 2013 and submissions before court by his counsel at the hearing on 7th November 2013; the accused states that he has a constitutional right to bail; that he suffers a blood sugar condition and peptic ulcers for which he requires treatment; and, that he will avail himself for trial.
3. The State has vehemently opposed the application on the ground that the accused is likely to interfere with prosecution witnesses who are closely related to him and his deceased wife. This ground is contained in various averments in the Replying Affidavit sworn by **Senior Sgt. John Maingi** of Divisional CID Gatundu who is the Investigating Officer in the case; and, in the oral submissions of **Mr. Konga** acting for the State.
4. In considering the application, I note that the Constitutional basis of the application is not contested. Indeed the accused has a right to be released on bail where there are no compelling reasons. I also take note that the court retains the discretion to decide each application on its own facts and circumstances.
5. Two issues arise in this application. The first one which the prosecution has canvassed extensively is the vulnerability of prosecution witnesses who are said to be closely related to the accused and his deceased wife. The second one which was not raised by the prosecution but to which the court is alive, is the uncertainty of the soundness of mind of the accused. I will address this later issue first.
6. It appears from the record that the mental status of the accused has not been settled to date. The accused was first arraigned for plea on 13th August 2012. A medical report produced in court however indicated that the accused was not fit to plead. Subsequent medical reports resting with one dated 3rd June 2013 by a panel of two consultant psychiatrists at the Mathari Hospital (Dr. Syengo Mutisya and Dr. Karanja Kibet) stated that the accused was still not fit to plead owing to uncertainties on his mental status which required further investigation including corroborative family history and MRI.
7. To date however, the investigation has not been done owing to a failure by the accused to meet

the requisite costs required by Kenyatta National Hospital. The record reflects that neither the police, nor the prisons, nor the Director of Public Prosecutions, nor the accused has been willing and or able to shoulder the responsibility.

8. The record also shows that the accused did take plea on 5th June 2013 despite there being no conclusive report on his mental status. That was a grave omission. The proceedings and the plea taken under those circumstances are in law a nullity. The court therefore of its own motion declares the same to be null and void. That being the case, the accused cannot be considered for bail without first taking a valid plea upon there being filed in court a comprehensive medical report.
9. The second issue is the vulnerability of the witnesses and the likelihood of the accused interfering with them. The probation report which was filed in court is silent on this issue as well as the mental history of the accused. Although a number of the deceased's relatives were interviewed by the probation officer, none of their children was interviewed. The probation report is silent on their opinion.
10. With the above uncertainties regarding the mental status of the accused and the vulnerability of the witnesses including the children of the union, I am reluctant to release him on bail. His application is denied pending a conclusive psychiatric report, a valid plea, and a more detailed pre-bail report from the probation officer.

Orders accordingly.

Ruling delivered, dated and signed at Nairobi this 26th day of February, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the Applicant

.....: For the State/respondent