



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 45 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH MUIMI DOUGLAS.....ACCUSED

RULING

1. The accused has through counsel applied for bail pending his trial. Mr. Akwalu for the accused made the application orally. Learned counsel for the accused urged that the accused was entitled to bail under Article 49(1) (h) of the Constitution. Counsel urged that only condition is if the state shows compelling reasons why bail should be denied.
2. Mr. Akwalu submitted that the case has come up for hearing several times but the case has never taken off. Counsel urged that the accused had been denied speedy trial as guaranteed under Article 50(2)(c) of the Constitution.
3. Mr. Akwalu submitted that the Probations Pre-Bail Report shows nothing was discovered that would warrant bail being denied and further that the Police Officer had discovered a neighbor who was willing to stand surety for the accused.
4. Mr. Moses Mungai learned Prosecution counsel opposed bail on behalf of the State and relied on his replying affidavit counsel urged two reasons for taking that position. The first one is that the accused went into hiding after the commission of this offence and was found and arrested two years later.
5. The second ground urged by Mr. Mungai is the fact that the accused comes from same locality as the deceased. In regard to Pre Bail Report's comment that the proposed surety for the accused promised to relocate the accused, Mr. Mungai urged that the statement was not under oath therefore uncertain.
6. Asked to respond to the Prosecutions Counsel's submissions particularly alleged disappearance of the accused after this offence, Mr. Akwalu had no comment.
7. I have considered this application, submissions by counsel, prosecution counsel's affidavit and Probations Pre-Bail Report. In **Ng'ang'a vs Republic 1985 KLR 451** Hon. Chesoni J, as he then was held, commenting on principles to be considered in applications for bond:

“1.The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors

- a. **In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for**

believing that:

- i. **The accused will fail to turn up at his trial or to surrender to custody;**
 - ii. **The accused may commit further offences; or**
 - iii. **He will obstruct the course of justice.**
- b. **The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;**
- i. **The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
 - ii. **The strength of the prosecution case;**
 - iii. **The character and antecedents of the accused;**
 - iv. **The likelihood of the accused interfering with prosecution witnesses.**

Where more than one person are jointly charged with a criminal offence, the case of each accused person must be examined on its own facts and this applies also to an application for bail in which each accused person's application is to be considered on its own facts, circumstances and merit."

8. Even though principles were applied under the 'old' constitution, I believe they still apply with necessary variation. It is relevant therefore to take into account the averment by Prosecution counsel that accused hid for 2 years after the offence was committed.
9. I note from the information before court dated 5th May 2009 that the murder was committed on 19th day of August 2007. The court proceedings and record indicates that the accused was arraigned in court on 6th May, 2009.
10. It is noteworthy that despite the prosecution filing an affidavit in which averment was made that accused went into hiding after this offence, the defence did not find it necessary to controvert that averment. See paragraph 10 and 11 of replying affidavit.
11. I have noted that the state filed a replying affidavit yet no application or affidavit had been filed by the defence. The state should have referred to its affidavit simply as Affidavit. That is however, a technical point which I find does not prejudice the accused as it was filed on same day this application was made. If defence required it could have been given time to file responses.
12. I also noted that the accused was arraigned in court on 6th May, 2009; one year nine months after the offence was committed. Fact accused opted not to clarify the lapse between the two is noteworthy. It can only mean that what the state submitted about his disappearance has truth in it.
13. Having considered the lapse between date of offence and date of accused arraignment in court. I find that accused must have gone into hiding as state averred. The chances of the accused absconding once granted bail cannot be rule out.
14. **I have come to the conclusion that there are compelling reasons why accused should not be granted bail. I therefore decline the accused bail and direct he should remain in custody pending his trial.**
15. **Those are my orders.**

DATED SIGNED AND DELIVERED THIS 27TH DAY OF MARCH, 2014

J. LESIIT

JUDGE.