



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 13 OF 2014

REPUBLICRESPONDENT

VERSUS

SGT. JOHN NDUNGU KIRERIAPPLICANT

RULING

1. The accused, **Sgt. John Ndungu Kireri** is facing trial for the murder of one Moureen Chepkemei Kakuko. It is alleged that he committed the offence on the night of 17th and 18th January 2014 along Mama Ngina Drive Road within Kiambu County. He denied the charge when arraigned in court both on 28th January 2014 again on 10th February 2014 on the substituted charge and was remanded in custody.
2. The accused has now applied for bail pending trial. His learned counsel **Mr. Wainaina** has sworn a lengthy supporting affidavit which *inter alia* avers that the trial was likely to take long; that the accused was a long serving police officer; that he was a family man; that he had a right to bail; and, that he would religiously attend court when required. At the hearing of the application on 4th March 2014, counsel elaborated on the averments in his affidavit and underscored that the accused was entitled to bond on reasonable terms under **Article 49 (i) (h) of the Constitution** and that there were no compelling reasons advanced by the State to warrant denial of bail.
3. The application is opposed by the State through the replying affidavit sworn on 17th February 2014 by **No. 77220 Cpl. Moses Mwangi** who is one of the investigating officers and the oral submissions tendered before court by **Ms. Mwaniki**, the learned prosecution counsel. From the replying affidavit and the submissions, it is apparent that the State opposes the application for three reasons. Firstly, it fears that the release of the accused may inflict fear in the key prosecution witnesses who are 1st year students at the Kenyatta University. Secondly, that the accused refused to co-operate with the investigation by refusing to have his DNA samples collected for analysis as part of the investigation and, thirdly; that the accused was likely to abscond owing to the severity of the sentence upon conviction.
4. I have considered the application. The Constitution under Article 49(i) (h) gives any arrested person the right to bail pending a charge or trial except where there are compelling reasons. The duty of demonstrating compelling reasons rests in the first instance on the prosecution. The court however retains discretion on whether or not to grant bail depending on the facts and circumstances of each individual case. See **Republic Vs Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008**.
5. In this application an argument has been made by the State that the accused was likely to abscond trial owing to the severity of sentence upon conviction. While this might be the case where a person is likely to be convicted; the opposite scenario may be likely where an accused believes in his innocence. Such an accused may very well want to undergo trial to clear their name. In this particular application, I am not persuaded that the applicant is likely to abscond trial. Contrary to

the prosecution's fear it has been demonstrated by the applicant that he is a long serving public officer with a family.

6. On the question of witnesses however, I have taken the liberty to look at the list of prosecution witnesses in the bundle. While I cannot comment on the content of the statements at this stage, I have confirmed that the witnesses are indeed university students who were the colleagues of the deceased. They are young and vulnerable and will easily be intimidated by the release of the applicant. I am persuaded, considering the circumstances of this case that the release of the applicant will inflict real fear in such witnesses. I consider that the interests of justice shall be served in disallowing rather than allowing this application.

The application dated 4th February, 2014 is dismissed.

Ruling delivered, dated and signed at Nairobi this 24th day of March, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

..... : Applicant

.....: For the accused/applicant

.....: For the State/respondent