



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 34 OF 2013

REPUBLIC.....PROSECUTOR

-VERSUS -

TIRUS MWANGI NJOROGE.....ACCUSED

RULING

In his application dated 5th December 2013, the applicant Tirus Mwangi Njoroge seeks for orders for release on bail pending the hearing and determination of the case.

The grounds supporting the application are that the offence of murder which the applicant faces is bailable. He deposes that he is not a flight risk and that he will abide with the terms and conditions. Mr. Ochako for the applicant argued that the applicant is a young person aged 25 years and that the replying affidavit contains no compelling reasons not to release the applicant.

The State opposed the application relying on the replying affidavit of C. I. Samuel Agutu. The grounds in opposition are that the evidence is very strong against the accused person. The prosecution expresses the fear that there is a likelihood of interference with witnesses most of whom are minors. There is fear of the security of the accused if released on bond due to the hostility of his home area residents. The seriousness of the offence and severity of the sentence enhances the chances of absconding.

The pre-bail report gives a double edged attitude of the community. The relatives of the accused are willing to facilitate release if the court allows this application while those of the deceased are opposed to release on bond and are still bitter with the accused for killing the minor child. In consideration of these and other factors, the probation officer does not recommend release on bond.

The court's primary concern in granting bail is whether the accused will turn-up for trial. The other factors raised by the prosecution may be considered but are not sufficient for the court to refuse a bail application. The offence is bailable under **Article 49(1)(h)** of the **Constitution**. Subject to the prosecution demonstrating that there are compelling reasons not to release the accused on bail. Under **Article 50(2)(a)** the accused is presumed innocent till proven guilty. For this reason, gravity of the offence and the severity of the sentence should not be used to deny the accused release on bail.

The responsibility of the security of the accused is on the state to a greater extent and on him on the other part. The law regarding this subject will be applied if the situations so requires and the

prosecution/should not worry about the applicant.

I note that on the allegation of the applicant interfering with minor witnesses, no names were given and nor was the feared threat explained. The State has a duty to prove that here are compelling reasons which burden has not been discharged.

This court finds the information given in the pre-bail report very useful. However, the court is not bound by the recommendation. I have considered all the foregoing grounds and argument of the counsels and find that no compelling reasons have been proved by the prosecution.

I therefore allow this application. The accused may be released on bond of Kshs.1,500,000/= with two sureties of alike amount. He will be required to attend mentions in court after every two (2) months until the case is disposed of. If he wishes to leave the jurisdiction of this court, the accused shall have to obtain the permission of this court. He is also directed not to keep any contact with the prosecution witnesses or interfere with them in any way.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the **8th** day of **April, 2014** in the presence of the accused, Ms. Abong'o for Ochako and the State Counsel Ms. Onunga.

F. N. MUCHEMI

JUDGE