

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 12 OF 2014

BYRON ROBERT OTIENO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application for bail by the accused **Byron Robert Otiemo** has been opposed by the State on several grounds. The investigating officer **PC Erick Kosimbei** has sworn an affidavit dated 13th May 2014 stating that the accused was a flight risk; was likely to interfere with witnesses; and was likely to be harmed by the public if released.

At the hearing of the application on 14th May, 2014, **Mr. Kongo** the learned defence counsel prosecuted the applicant's application dated 11th March 2014 by contesting the averments in the Replying Affidavit of **PC Kosimbei**. He urged the court to release the applicant under **Article 49 (i) h** of the **Constitution** stating that the applicant was still innocent until proven guilty; had a fixed abode and was not a flight risk. He submitted that the court should consider that the trial may take long and that the applicant had already spent four months in custody.

I have carefully considered the respective affidavits and submissions in this application. It is the view of the State that the applicant may be tempted to abscond owing to the likelihood of conviction as the offence was committed in broad daylight and in full view of the eye witnesses who are now prosecution witnesses. This position is contested by the defence for reason that such evidence is yet to be tested at trial.

While I cannot comment on the strength of the evidence at this point, I note from the witness statements to which I was referred that the witnesses state that the incident occurred at around 4p.m. **Silas Otiemo Opera** in particular states that he was in the company of both the deceased and the accused when they fought. It is the fear of the prosecution that with such evidence, the accused may abscond trial to avoid a likely conviction. Such a fear in my view, may not be far fetched.

A related ground advanced by the prosecution is that the applicant was likely to take flight as he had attempted before. **PC Kosimbei** depones at paragraph 5 of his affidavit that the applicant went into hiding for almost a year after committing the offence and was only arrested upon a report being made by one of the deceased's relatives that he had been spotted in the locality.

Having carefully considered the application, I am persuaded from the applicant's antecedent of attempting to evade justice before that he may not attend his trial if released. The averment that he disappeared for almost a year has been demonstrated. The record shows that the applicant was arrested on 17th January 2014 while the offence was committed on 9th May 2013. Bearing in mind that the primary purpose of bail is to secure the accused's attendance at trial and having found that he is likely not to attend, I am disinclined to grant him bail. He shall remain in custody pending his trial.

His application dated 11th March 2014 is dismissed

Ruling delivered, dated and signed at Nairobi this 29th day of May, 2014.

R. LAGAT-KORIR

JUDGE

In the presence of:-

-: Court clerk
-: Applicant
-: For the accused/applicant
-: For the State/Respondent