



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 27 OF 2013

REPUBLIC.....PROSECUTOR

-VERSUS -

PETER MAINA KANGARA.....ACCUSED

RULING

The applicant faces a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** to which he pleaded not guilty. The plea was taken on 21st February 2013. In his chamber summons dated 17th March 2014, the applicant seeks for orders of bail on reasonable terms.

The applicant puts forth several grounds in support of the application. In his affidavit, the applicant states that he is only 21 years old and yet to get married; that the case may take a longtime to finalize; that he undertakes to attend court when required to do so and that he is not a security threat to anyone if released on bond.

Mr. Thuita cited **Article 49(1)(h)** of the **Constitution** arguing that the state has not shown any compelling reasons which would justify the court not to release the applicant. He is not a flight risk and has no intention to interfere with witnesses. The counsel argued that the seriousness of the offence and gravity of sentence should not interfere with the accused's constitutional rights to bail. The principle of presumption of innocence must benefit the accused despite the existence of strong evidence in the case. The counsel submitted that the prosecution have not demonstrated any evidence that the accused is likely to interfere with witnesses.

Ms. Ikol for the state made her submissions based on the replying affidavit sworn by the investigating officer CPL Muktar. The grounds in summary are that: the accused faces a murder charge which is very serious and carries a mandatory death sentence which factors may tempt the applicant to escape; the prosecution's evidence is very strong and is likely to result in a conviction; the prosecution witnesses live near the accused and he is likely to interfere with them if released on bond; the applicant absconded after commission of the offence and is likely to repeat it again if released on bond.

I have perused the authorities relied on by the applicant. The principles laid down in most of the decisions are that the primary concern of the court while granting bail should be whether the accused is likely to turn up for trial and that presumption of innocence in criminal law requires to be upheld.

Article 49(1)(h) of the **Constitution** provides that the accused person shall be granted bail unless the State has a compelling reason not to do so. The right to bail is open to all criminal offences irrespective of the seriousness or otherwise of the offence charge. The argument by the State that the applicant is charged with murder is not consistent with the provision of **Article 49(1)(h)** which is a major departure from the old regime of bail/bond law where capital offences were not bailable. The strength of the evidence as argued by the prosecution is not a bar to granting bail. **Article 50(2)(a)** of the **Constitution** presumes the accused person innocent until proven guilty. The prosecution has not presented any tangible evidence that the accused is likely to interfere with witnesses. It was argued they are neighbours of the accused but the particulars of the residential area or distances between the witnesses' respective homes from that of the accused were not given. This ground was not treated with the seriousness it deserves by the prosecution. It would be expected that more detailed information ought to have been given. I find that the prosecution's fear of interference with witnesses founded on shaky ground.

The court has a discretion to grant bail to an accused person under **Article 49(1)(h)**. The prosecution in this case has not shown that the accused is not likely to turn up for trial or that he is likely to interfere with the prosecution witnesses. No tangible evidence was tendered before this court to prove any compelling reason.

I am in agreement with the reasoning and principles laid down in the cases of **Alexander Mburu Wanjiku vs. Republic 2013 eKLR** and that of **Aboud Rogo vs. Republic 2011 eKLR** that the prosecution must demonstrate compelling reasons failure to which the court will grant bail to the applicant which it has failed to do. I am therefore inclined to allow this application on the following terms:

1. That the applicant shall execute a bond of Kshs.2,000,000/= with two sureties of alike amount;
2. That the applicant shall attend routine monthly mentions before the Deputy Registrar, Criminal Division, Milimani Court – until the case finally disposed of;
3. That the applicant shall not leave the jurisdiction of this court without its permission.

I hereby so declare and decree.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered in open court on the 25th day of **June 2014** in the presence of:

1. Applicant
2. Mr. Waweru for Thuita for Applicant
3. Ms. Gichohi for State

F. N. MUCHEMI

JUDGE