



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO.73 OF 2013
PETER MAYEKA MOYONGA.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

1. The accused **Peter Mayeka Makongu** is charged with the murder of one Job Maina Samuel. He denied the charge and is awaiting his trial which is yet to commence. On 26th March 2014, he filed the instant application to be released on bail pending trial. He states in his supporting affidavit that he will not abscond trial and will not interfere with witnesses if released.
2. The application is opposed by the State. **Cpl. Bernard Ndunda** who is the investigating officer in the case has sworn a Replying Affidavit stating that the accused was likely to interfere with prosecution witnesses who are related to both the accused and the deceased as the two were cousins. Secondly, he depones that the accused was a flight risk as he has no fixed abode.
3. In arguing the application before me at the hearing, **Mr. Oduor** for the accused submitted that the applicant was entitled to bail under Article 49 (i) h of the Constitution and that the state's opposition was an afterthought since they did not object to bail at the time of plea. He contended that the determination of the preserve strength of the evidence against the accused was the presence of the court. Counsel further submitted that the accused would not pose any flight risk as he has relatives who were ready to stand surety. Finally on the issue of likely interference with witnesses, he submitted that the accused had no interest with the witnesses and would not interfere with them.
4. In considering this application, I am guided by Article 49(i)h of the Constitution which gives “any suspect the right to bail unless there are compelling reasons” It is the duty of the State where it opposes bail to demonstrate to the court the compelling reason(s) why an applicant should not be admitted to bail. In the present application the State has expressed and endeavoured to demonstrate two reasons.
5. The first one is that the applicant is a flight risk primarily because he has no fixed abode. This was the averment of the Investigating officer at paragraph 5 of the Replying Affidavit where he states;-

“that the applicant is a flight risk since he does not have a fixed abode. The applicant was working as a tout in Rongai and living in a rented house. He has also not informed this honourable court of his place of abode, if any. In the light of the above, the applicant may also disappear”

I fail to appreciate the inference that one becomes a flight risk just because of having earned a living as a tout and having lived in a rental house. I must dismiss this fear as unfounded.

6. The second reason advanced at paragraph 6 is that the accused is likely to interfere with witnesses. This point was strongly canvassed by the prosecution counsel who submitted that the accused and the deceased were cousins and that one of the prosecution witnesses were his relatives. She referred the court to the witness statements. On this second reason, I do not find the prosecution fears to be unfounded. It is not disputed that both the accused and the deceased were close relatives and that some of the prosecution witnesses are common relatives. Under those circumstances, I am persuaded that the interests of justice will better be served in denying rather than granting the applicant bail.

7. He is at liberty to renew his application once the four civilian witnesses who are close relatives of both the accused and the deceased have testified.

The application dated 25th March 2014 is dismissed.

Ruling delivered and signed at Nairobi this **23rd** day of June, **2014**

R.LAGAT-KORIR

JUDGE

In the presence of:-

..... :Court clerk

..... :Applicant/Accused

..... :Counsel for the Applicant/Accused

..... :Counsel for the Respondent