



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 5 OF 2014

P.C. NO.70156 NICKSON CHEPKWONY.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Nickson Chepkwony** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. According to the information filed by the Director of Public Prosecutions on 6<sup>th</sup> January, 2014, he murdered one **Felister Awino** on the night of 21<sup>st</sup> December at **G.S.U Camp Headquarters Ruaraka** within **Nairobi County**.

When arraigned in court on 13<sup>th</sup> January 2014 he denied the charges and was remanded in custody. On the same date, he filed a Notice of Motion seeking to be released on bail. He states in his Supporting Affidavit that he has co-operated with the investigating officers and will continue to do so if released; that he undertakes to attend his trial; that his continued incarceration unduly prejudices his constitutional right to be presumed innocent till proven guilty under **Article 50(2) of the Constitution**; and, that it was in the interest of justice that he be granted bail.

The application is opposed by the State. **No. 85360 PC Darius Sowene** who is the investigating officer in the case has sworn a Replying Affidavit stating that although the Constitution makes provision in **Article 49 (i)** for an accused to be released on bail, it is not an absolute right but a matter of discretion of the court. He avers that the accused is well known to all the witnesses who are fellow police officers and that he was likely to receive sympathy from them therefore interfering with the case. He further avers that the applicant was not entitled to bail since there is overwhelming evidence against him.

At the hearing of the application on 19<sup>th</sup> May 2014, **Mr. Kongo** for the applicant urged the court to release the applicant in accordance with **Article 49(i) h of the Constitution**. He discounted the State's position that the applicant was likely to interfere with witnesses or likely to abscond. On the other hand, **Mr. Okeyo** for the respondent urged the court not to release the applicants stating that the possibility of interference with witnesses was real. He submitted that the applicant was a police officer of 16 years and that he was likely to either induce or intimidate the witnesses who were his colleagues or even attract sympathy from them. He sought to demonstrate that the applicant was a flight risk as he fled the scene of crime and failed to report the offence.

From the above, it is apparent that the main reason why the State opposes the application is that the applicant was likely to interfere with prosecution witnesses. According to the averments of **PC Darius Sowene** and the submission of learned prosecution counsel **Okeyo**, the fear stems from the fact that the applicant is a police officer and that the witnesses are his colleagues and that such a collegial

relationship may attract sympathy from the witnesses. However, other than making a sweeping statement that the applicant was likely to get sympathy from fellow police officers, the State has not demonstrated to the court any other linkage between the accused and the witnesses. It has not even shown whether the witnesses were junior in rank to the accused so as to show a possibility of intimidation. Apart from this, the State has not made out a case for the possibility of civilian witnesses being interfered with.

It has been stated before that the duty of demonstrating to the court the existence of compelling reasons why an accused should not be released on bail rests with the State. After a careful consideration of the replying affidavit and the submissions of the prosecution counsel as well as the pre-bail report, I find that no compelling reasons have been demonstrated.

In the premises, I do not find any compelling reason within the meaning of **Article 49(i) h of the Constitution** to deny the applicant bail. I will therefore admit the applicant to bail on the conditions that he shall:-

- i. Execute a personal bond of Kshs.500,000/- with two sureties of like amount.
- ii. Not leave the jurisdiction of this court without an order of the court.
- iii. Shall not contact prosecution witnesses directly or indirectly and shall not in any manner whatsoever interfere with them.
- iv. Attend monthly mentions of his case before the Deputy Registrar of the Court. The first of such mention shall be on 29<sup>th</sup> August, 2014.

Violation of any of the terms shall lead to the automatic cancellation of bail.

Orders accordingly.

**Ruling delivered and dated at Nairobi this 21<sup>st</sup> day of July, 2014.**

**R. LAGAT-KORIR**

**JUDGE**

In the presence of A

.....: Court clerk

.....: Accused

.....: For accused

.....: For State