



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 8 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

PETER NG'ANG'A KAMAU.....ACCUSED

RULING

1. The **information dated 31st January 2014** discloses that Accused, **Peter Ng'ang'a Kamau**, is charged with **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. The particulars of offence are that on 19th October 2013 at Mitei village in Gatundu North District within Kiambu County, he, jointly with others not before court, murdered one **George Kinga Gathoni**.
2. The court record shows that plea was taken on 17th February 2014. The Accused pleaded not guilty to the charge. His trial commenced on 19th May 2014; two prosecution witnesses testified. The trial Judge has since been transferred to another station and this trial will either proceed before me from where it had reached or start afresh. Directions in that regard shall be given once the proceedings so far have been typed.
3. On 4th July 2014 the accused applied by **notice of motion dated 26th June 2014** to be admitted to bail pending conclusion of his trial. That application is the subject of this ruling.
4. In his supporting affidavit the Accused has deponed that he was arrested on 10th January 2014; that prior to his arrest he was carrying on business at Gatundu and in Narok town; that as a consequence of his arrest and incarceration his businesses has nearly collapsed; that he is the sole bread-winner of his family, and they have been greatly affected by his incarceration; and that he has not been feeling well since 10th June 2014 and was taken to hospital for treatment only on 15th June 2014 where he was diagnosed as suffering from acute malaria and high blood pressure. He says he is prepared to abide by such terms as the court may impose.
5. The application is opposed by the Republic; there is a replying affidavit sworn by the investigating officer, one **PC Edward Ndemo**. He has deponed that after commission of the offence the Accused went at large and was not arrested until about three months later far from the place of commission of the offence; that the offence was committed jointly with others who are still at large; that the investigating officer has information that those other suspects are in constant communication with the Accused and have been threatening prosecution witnesses in this case; and that the community is still furious with the Accused, and it would be unsafe to release him back into the community at this time.

6. The investigating officer has also deponed that the Accused is a habitual offender with previous records of conviction, and that though he has sent his finger-prints to *CID Headquarters* he is yet to receive the necessary report.

7. The learned counsels appearing submitted along the lines outlined above at the hearing of the application. I have considered their submissions. No authorities were cited.

8. All criminal offences are nowailable under the *Constitution of Kenya, 2010*. Bail is thus a constitutional right which will be denied only as provided for in the *Constitution*.

9. Under **Article 49(1) (h)** of the *Constitution*, an accused person has the right to be released on bond or bail, on reasonable conditions, pending trial, unless there are *compelling reasons* not to be released. The only issue to be considered in this application therefore is **whether there are any compelling reasons why the accused should not be released on bail pending completion of his trial**.

10. The witness statements as recorded by the police are before the court (the same were also provided to the Accused). I have looked at those statements and have noted the circumstances in which the alleged offence was committed. I note that the Deceased died some days after he was allegedly assaulted. He had been arrested and then apparently released into the Accused's custody. The Accused was the complainant in the case for which the Deceased had been arrested, for allegedly stealing the Accused's goods.

11. The Deceased was allegedly assaulted while in the Accused's custody. After his death the Accused never surrendered himself to the police. He was arrested more than three (3) months later far away from his home area where the Deceased had been assaulted.

12. In these circumstances I consider that there is a real flight risk should the Accused be released on bail. That is a compelling reason not to release him. The fact that there are other suspects who are still at large is an added risk.

13. I will therefore refuse this application. I hold that there is at least one compelling reason why the Accused should not be released on bail. His application is dismissed. He shall remain in custody until completion of his trial. It is so ordered.

DATED SIGNED AND DELIVERED AT MURANG'A THIS 21ST DAY OF NOVEMBER 2014

H.P.G.WAWERU

JUDGE