



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION MILIMANI

CRIMINAL CASE NO. 81 OF 2014

REPUBLIC.....PROSECUTOR/RESPONDENT

VERSUS

JUMA NYAYO ABERI.....ACCUSED/APPLICANT

RULING

1. Juma Nyayo Aberi, the applicant, is charged with murder. It is alleged that he murdered Edward Onsongo on 22nd August 2014 at Kingstone Slums in Industrial Area Nairobi. Pending the hearing and determination of this case, he has applied to be released on bail/bond. His application dated 3rd November 2014 was filed in court on 28th November 2014. He has anchored his application on Article 49 (1) (h) of the Constitution 2010 and Section 123 (1) and (3) of the Criminal Procedure Code and other relevant provisions.
2. The grounds in support of the application are found on the face of the application as well as the supporting affidavit sworn by the applicant. Mrs Gulenywa, counsel for the applicant, also made brief oral submissions in support of the application.
3. Briefly, the applicant is saying that murder is a bailable offence under the Constitution; that he is a law abiding citizen and is ready and willing to abide by the bail terms and conditions that this court may set; that there are no compelling reasons to deny him bail and that he will not interfere with investigations or witnesses; that he has no previous criminal records and that he has cooperated with the police during investigations.
4. The respondent did not file a replying affidavit but nonetheless opposed the application. The court allowed Mr. Okeyo, counsel for the respondent to submit orally. Counsel submitted that the applicant has not indicated his specific place of abode and therefore if he is released on bond and he absconds, he may not be traced. Counsel further submitted that most of the witnesses in this case are friends of the applicant and that the key witnesses come from the same village as the applicant and therefore the respondent is apprehensive that the applicant may influence them if released on bond. It was submitted that after the commission of the offence the applicant went into hiding before he was arrested by the members of public portraying him as a flight risk.
5. Counsel for the applicant responded that the court upon approving bond requires the applicant to complete some forms where the contact person is normally indicated and that the applicant has a permanent home where he can be traced. Counsel further responded that all the witnesses have recorded statements with the police and there is nothing the applicant can do about those statements.
6. I have carefully considered rival submissions in this matter. The applicant, despite facing a murder charge, enjoys the right to liberty and the right to be presumed innocent until the contrary is proved. For the court to interfere with these rights there must be proof of compelling reasons. The onus is on the respondent to prove compelling reasons. Three reasons have been advanced by the

- respondent in an attempt to persuade this court to deny bail to the applicant: failure by the applicant to state his place of abode; apprehension that he may interfere with investigations and witnesses and that the applicant went into hiding after the commission of the offence.
7. It is true the applicant has not indicated his place of abode in his affidavit. I have looked at the statement he recorded with the police. It shows his address in Nairobi as C/o Style Industry but it does not indicate the postal or physical address. It however gives cell number as 0723 670 080. Other particulars are given as Identity Card No. 22409210, Iteri Village, Iteri Sublocation, Iteri Location, Masaba Division, Kisii District and Kisii County. I also take into account that before he is released from custody, there are forms to be completed and in those forms all the particulars of the surety are given.
 8. The respondent did not specify which witnesses are friends of the applicant or which ones live in the same neighborhood with the applicant. There is no evidence of the alleged interference or an attempt to interfere with investigations or witnesses. This remains just an apprehension. I have also taken into account that the investigations are complete and all the witnesses have recorded statements. The respondent is in possession of those statements and therefore there is nothing the applicant can do about changing or interfering with them.
 9. On the issue that the applicant went into hiding after the offence, I have read the statements and I note that the applicant was found in the open field the following day after the offence. I doubt anyone could hide in the open field.
 10. After due consideration of the matter, it is my view that the respondent has not satisfied this court that there are compelling reasons to deny the applicant bail. The hearing date has been given for June 2015 and without cogent reasons as to why this court should deny the applicant his right to liberty pending the hearing and determination of this case, I find that I am not able to do so. This court presumes the applicant as innocent at this stage of the case until evidence is tabled to prove his culpability. I have taken into account that the paramount consideration in a bail application is that the applicant attends court when required to do so until his case is heard and determined. This is why the court sets bail terms and conditions to secure the applicant's attendance. In view of my reason above, I hereby allow the application on the following terms and conditions:
 - i. **That the applicant shall execute a bond of Kenya Shillings One Million (Khs. 1,000,000) with one surety of similar amount.**
 - ii. **That in the alternative the applicant is at liberty to deposit a cash bail of Kenya Shillings Five Hundred Thousand (Kshs 500,000) with the Chief Registrar of the Judiciary.**
 - iii. **That the applicant shall attend monthly mentions before the Deputy Registrar until his case is finalized or until this court makes further orders in this respect. The first such mention shall be in thirty days upon executing the bond.**

11. It is so ordered.

Dated, signed and delivered this 18th December 2014

S.N Mutuku

Judge