

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.104 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY WANJALA WECHULE.....ACCUSED

RULING

The Accused, Geoffrey Wanjala Wechule is charged with the offence of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on 20th October 2013 at Kawangware, Gatina Area, the Accused murdered Jane Kadogo Mutiso. When the Accused was arraigned before this court, he pleaded not guilty to the charge. The trial is yet to commence. The Accused has applied to be released on bond pending trial. He states that he is not a flight risk, will not interfere with witnesses, is a person of fixed abode and will attend court and will abide by any bond terms that may be issued by the court. The application is supported by the annexed affidavit of the Accused.

The prosecution opposes the application. They relied on a replying affidavit sworn by the investigating officer. This court did not have the benefit of reading the said replying affidavit because the same is not in the court file. Prior to the hearing of the application, Adika M.M., a Probation Officer prepared a pre-bail report. The same has been filed in court. During the hearing of the application, this court heard oral rival submission made by Mr. Ochako for the Accused and by Ms. Ikol for the State. The issue for determination by this court is whether the Accused made a case for this court to release him on bail pending trial. That the Accused is entitled to be considered for bail pending trial as provided under **Article 49(1)(h)** of the **Constitution** is without doubt. However, the court must be satisfied that there exist no compelling reasons to deny him bail. Among the compelling reasons to be considered by the court include: the nature of the offence, the strength of the evidence which supports the charge, the gravity of the punishment in the event of conviction, the previous criminal record of the applicant, the probability the accused may present or surrender himself for trial, the likelihood of further charges being brought against the accused, the likelihood of the accused interfering with witnesses or to procure the suppression of evidence that may incriminate him, the probability of finding the accused guilty as charged, the detention for protection of the accused and the necessity to procure medical or social report pending final disposal of the case (see **Republic –vs- Milton Kabulit & Others Criminal Case No.115 of 2008 (Nakuru)** – unreported). The above reasons are not by any means exhaustive. The court hearing the case will have to determine each case based on its merits and circumstances.

In the present application, the prosecution states that by virtue of his profession (witchcraft), the Accused, if released on bail pending trial is most likely to influence the witnesses not to attend court. The prosecution argued that most of the witnesses were unlikely to testify because they would be intimidated by the Accused. The prosecution further submitted that one of the prosecution witnesses is a minor child of the Accused. If released on bail, the Accused was likely to influence this child. On his part, the Accused reiterated that the prosecution had not established any compelling reason to deny him bail pending trial. He gave the undertaking that he would abide by any terms that this court may impose to secure his release on bail pending trial.

Having considered the facts of this case, this court takes the following view of the matter: the prosecution did not establish a compelling reason for this court to deny the Accused bail pending trial. The fact that the Accused is a witchdoctor by profession (as stated by the prosecution) is not sufficient reason for this

court to deny him bail. This court takes judicial notice of the fact that if indeed the Accused intends to use his tools of trade to intimidate the witnesses not to testify against him in the trial, nothing stops him from using “remote control” to influence the prosecution witnesses while in remand custody. This court further observed that during the one time that the case has come up for hearing, six (6) witnesses attended court. The witnesses come from various parts of the country. The said witnesses do not reside in the same locality as the Accused. The likelihood that the Accused will influence the said witnesses if released on bail pending trial is therefore remote. In any event, as a condition of his release on bail, the court will issue appropriate directions to secure the concerns raised by the prosecution.

In the premises therefore, this court holds that the Accused establish a case to be released on bail pending trial. He is released on condition that he posts a bond of Kshs. 1 million with one surety of the same amount. The Accused shall attend court without fail. He shall not be in contact with the prosecution witnesses (who are not members of his family) until after they have testified. It is so ordered.

DATED AT NAIROBI THIS 11TH DAY OF DECEMBER 2014

L. KIMARU

JUDGE