



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.41 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH NJOROGE MUNGAI.....ACCUSED

RULING

The Accused, Joseph Njoroge Mungai was charged with **murder** contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that on 5<sup>th</sup> November 2013 at Gatundu South Sub-county of Kiambu County, the Accused murdered Julius Mungai. When the Accused was arraigned before this court, he pleaded not guilty to the charge. The hearing is yet to commence. Pending the hearing and determination of the case, the Accused has invoked the provisions of **Articles 49 & 50** of the **Constitution** seeking to be admitted to bail. The Accused states that he is not a flight risk; had no intention of interfering with witnesses; was ready to abide by any terms issued by the court including periodically reporting to the nearest police station and posting bond as may be required. The application is supported by the annexed affidavit of the Accused.

The application is opposed. Corporal Evans Kipter, the investigating officer swore a replying affidavit in opposition to the application. While conceding that the **Constitution** grants the Accused the right to bail pending trial, that right is not absolute. In the case of the accused, the investigating officer stated that upon committing the alleged offence, the Accused disappeared from his home area. He was arrested seven (7) months after allegedly committing the offence. Prior to the incident, the Accused was convicted of assaulting the deceased. He was sentenced to serve eighteen (18) months imprisonment. He deponed that, at the time of that trial, the Accused had threatened to kill the deceased. He was apprehensive that if the Accused was released on bail pending trial, he would intimidate the prosecution witnesses. He urged the court to look at the statements written by two (2) of the prosecution witnesses which actually confirm the assertion by the prosecution that the Accused, if released on bail pending trial, he would likely harm the said witnesses. It was the prosecution's case therefore that there were compelling reasons for this court to deny the Accused bail pending trial.

During the hearing of the application, this court heard oral rival submission made by Ms. Rawal for the Accused and by Mr. Konga for the State. This court has carefully considered the said submission. The issue for determination by this court is whether the Accused establish 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 complete. The court hearing

the case will have to determine each case based on its merits and circumstances.

In the present application, it was clear that the prosecution placed before this court compelling reasons to deny the Accused bail pending trial. The Accused is presumed innocent pending his trial. However, the prosecution placed evidence before the court that prior to the deceased's death, the Accused had been convicted of assaulting the deceased and sentenced to a custodial term in prison. The prosecution further established that the Accused was likely to intimidate the prosecution witnesses if he is released on bail pending trial. The prosecution also established that the Accused was likely to abscond if he is released on bail pending trial. Taking into consideration the entire circumstance of this application, this court formed the view that the interest of justice dictates that the accused remain in custody pending the hearing and determination of the case.

In the premises therefore, the application lacks merit and is hereby dismissed.

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF DECEMBER 2014**

**L. KIMARU**

**JUDGE**