



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 93 of 2012

JOHN THUO... ..APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused John Thuo is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars are that on the 5th day of October 2012 at Ngong Township in Kajiado North District within Kajiado County jointly with another not before court murdered **Joel Githinji Njenga**.

He pleaded not guilty to the charge on 22nd November, 2012 and was remanded in custody pending trial. The trial is yet to commence.

On the 28th November 2012, the accused filed a notice of motion through his advocate, to be released on bail or bond pending trial. The application is based on the grounds that the applicant was initially charged with assault in **Kibera CMC Criminal Case No. 4685 of 2012** in respect of the same incident giving rise to the murder charge; that he complied with the bail terms imposed by the court; and, that he is ready and willing to abide by any condition that may be granted by the court. In the Supporting Affidavit sworn on 28th November 2012, the applicant avers that he is a Kenyan family man with a fixed abode and is ready and willing to abide by the bail terms.

The application is opposed by the state through the Replying Affidavit of **No. 77879 PC Stephen Njihia** who is the investigating officer. He depones that the applicant is likely to abscond and refuse to appear in court if released on bail and that he is likely to interfere with prosecution witnesses the majority of whom are civilians.

In submissions before court during the hearing, **Mr. Mureithi** learned counsel for the applicant argued that the state's opposition to the application was without basis and that the averments by the investigating officer with regard to the accused failing to attend court or being likely to interfere with witnesses was speculative and not supported by any evidence.

He submitted that the right to bail was provided for under **Article 49 of the Constitution** and that the right was grounded on the presumption of innocence. **Mr. Mureithi** cited a number of supporting authorities to buttress his submissions.

In opposition, **Ms Matiru** the learned state counsel submitted that the accused was now charged with a more serious offence and that the likelihood of absconding was real. She further underscored the

likelihood of the accused interfering with witnesses who were resident in the same locality with the accused.

The law and practice on bail for murder suspects is now fairly settled. Under **Article 49(i) of the Constitution** under which the present application is brought, an accused person has a right to bail unless there are compelling reasons not to be granted the same. This means that the right is not absolute and that the court may deny an accused bail where in considering the application, it finds compelling reasons. The duty of demonstrating the compelling reasons rests with the prosecution in the first instance. However, it cannot be gainsaid that the court must consider each case on its own merits and exercise its discretion in granting or not granting bail.

I have considered the application in its totality. I note particularly the fear expressed by the prosecution that the accused is likely to abscond or to interfere with witnesses. The prosecution however has not demonstrated to the satisfaction of the court the real likelihood of any interference with witnesses, either based on the accused's conduct, relationship with already identified witnesses, or on factors such as ongoing investigation. On the contrary, the applicant has demonstrated through past conduct that he can abide by bail or bond terms.

In this application, I find that the prosecution has not discharged its duty under **Article 49 (i) h** to demonstrate to the court any compelling reasons why the applicant should not be admitted to bail. In the circumstances, I find the present application one in which the discretion of the court can be exercised in favour of the applicant. I therefore admit the applicant to bail on the following terms:-

- (i) He shall pay a cash bail of Five hundred thousand shillings.(Kshs.500,000/-)
- (ii) Upon release, he shall report to the District Criminal Investigation Office,Ngong once every two weeks until further orders of this court. A compliance report thereof shall be filed with the court by the Investigating Officer through the prosecutor during every routine mention of the case.
- (iii) He shall attend court for the mention of his case once every month. The first of such mentions shall be onMay 2013.

It is so ordered.

Ruling delivered, dated and signed at Nairobi this 18th day of April, 2013

R. LAGAT - KORIR
JUDGE

In the presence of:

.....: Court clerk
John Thuo.....: Applicant
.....: For the accused/applicant
.....: For the state/respondent