



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 73 of 2012

ELIKANA KAGUNDA NJOROGEAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Elikanah Kagunda Njoro** 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 9th day of August 2012 at Kamende within Kiambu County murdered **Tabitha Wanjiru Miruru**.

He denied the charges and was remanded in custody pending trial. The trial is yet to commence.

On 4th December 2012 he filed a notice of motion seeking to be released on bail pending trial on the ground that the offence is bailable and that he is willing to abide by any conditions imposed by the court. In addition, he has averred in the supporting affidavit sworn on 4th December 2012 that he had nothing to do with the death of the deceased; that he is a student at Elimu Institute of Business Studies; that he will not interfere with his trial; and, that he is a law abiding citizen.

The application is opposed through the Replying Affidavit of the Investigating Officer one **No. 232647 Chief Inspector David K. Rop**. He depones *inter alia* that the accused is likely to interfere with witnesses and that there is sufficient evidence against the accused to secure a conviction.

The application was urged before me on 24th April 2013. **Mr. Okach** for the applicant urged the court to grant the application stating that the applicant was a student and has a fixed abode in Kitale where he lives with his parents. **Ms. Matiru** for the State urged the court not to release the accused as he was likely to abscond having earlier committed the offence and run away to Kitale where he was arrested.

I have considered the affidavits on record as well as the oral submissions by counsel.

Under **Article 49(i)** under which the present application is brought, an accused person has a right to bail. The right extends to any accused person regardless of the nature of the offence. However, bail is not an absolute right and where there are compelling reasons the court may not release an accused person on bail. The court is bound to consider each case on its circumstances and against the well settled and often cited criteria for the grant of bail, chief among which is to secure the applicant's attendance at the trial.

In the present application, the prosecution has demonstrated that the accused is a flight risk. Looking at his conduct after the alleged commission of the offence, I am not persuaded that he will attend court. This to my mind is a compelling reason not to release him on bail.

Consequently I do not find the present application one in which the court's discretion can be exercised in favour of the applicant.

The application is denied.

Ruling delivered, dated and signed at Nairobi this 16th day of May, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

Elikana Kagunda Njoroge: Accused

.....: For the accused