



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 45 OF 2013

ANTOINETTE UWINEZA ALIAS

MICHELIN UWABABYYI1ST APPLICANT

ALEXANDER KIOLE MUTIE.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Antoinette Uwineza alias Michelin Uwababyi and **Alexander Kiolo Mutie** are the 1st and 2nd accused respectively in Criminal Case No. 45 of 2013. They are charged with the murder of **Winnie Uwambaye Colpitts**. The offence was allegedly committed on 16th February 2013 at **Saharan Lodge along Duruma Road in Nairobi County**. The accused were arraigned in court on 26th March 2013. They pleaded not guilty to the charge and were remanded in custody pending trial which is set for 16th and 17th of December, 2013.

Both accused have now applied for bail pending trial. The application for the 1st accused was filed on 11th April 2013 by the firm of **Korongo & Co. Advocates**. It is supported by the affidavit of the 1st accused sworn on even date. The firm of **Wamwangi & Co. Advocates** filed the application on behalf of the 2nd accused on 12th April 2013. It is supported by the affidavit of the 2nd accused sworn on 11th April 2013. The two applications have been consolidated hence this single Ruling.

The 1st accused states in her application that she has an unqualified constitutional right to be released on bail; that she is not aware of any compelling reasons not to be released; that she has the right to be presumed innocent until the contrary is proved; and, that her continued deprivation of liberty and freedom of movement amounts to being punished before conviction.

On his part the 2nd accused states in his application that the court has jurisdiction to admit him to bail unless there are compelling reasons; that he is a Kenyan citizen; is single, works in the hospitality industry; and that he is ready to abide by any bail terms.

Both applications are opposed by the State through the Replying Affidavit of **No. 46191 Ag. IP Joseph Gichuki** who is the investigating officer in the case. In his affidavit sworn on 28th May 2013, he deposes that 1st accused hired the room where the deceased was found murdered while the 2nd accused was found with the mobile phone of the deceased; that there are 2 other suspects who are still at large; that the 1st

accused is a foreigner of Rwandese origin who has no permanent residence in Kenya, passport or work permit and is therefore a flight risk; that the 2nd accused too has no known permanent residence.

I heard the applications on 30th May 2013. Submissions were made by **Mr. Korongo** for the 1st applicant, **Mr. Wanyanga** for the 2nd applicant; and, **Mr. Okeyo** for the State. It was submitted on behalf of the 1st applicant that she has siblings to take care of; that the Constitution allows her release; that she is innocent until proved guilty; and, that her continued detention before trial was not justified. Counsel further submitted that the applicant was unwell and in need of medical attention.

On behalf of the 2nd applicant, it was submitted that there was no likelihood of his interference with witnesses; and, that he was a Kenyan citizen who prior to arrest earned an honest living in the hotel industry. **Mr. Wanyange** invited the court to look at the accused's witness statement which shows that the applicant co-operated with the police.

In submissions in opposition, **Mr. Okeyo** expounded the averments in the Replying affidavit of **Ag. Inspector Joseph Gichuki**. He urged the court to find that the accused were likely to abscond and also interfere with witnesses. **Mr. Okeyo** submitted that the 1st applicant was a Rwandan national who has no permanent residence in Kenya; that she was arrested in temporary accommodation in a lodging in Ngara; and that the applicant had not stated what business she was engaged in nor her place of business; where she would be traced if required. In respect of the 2nd applicant, **Mr. Okeyo** submitted that his permanent residence and place of work were not known and that he may also abscond.

I have considered the application. I take guidance from the law as provided in the Constitution. **Article 49 (i) (h) of the Constitution** gives an arrested person the right to bond or bail pending a charge or trial. This right in my understanding is not unqualified as submitted by the 1st applicant. It is a right that can be curtailed by the court where there are compelling reasons. The right too is available to citizens and non-citizens alike. The Constitution has however in its wisdom left the task of deciding on the compelling reasons to the court so that the court can, taking into consideration the circumstances of each individual case, exercise discretion in granting or refusing to grant bail. Needless to add, the court is obligated to exercise its discretion judiciously and on the basis of the law and facts before it.

In the present application, the State has expressed the fear that the accused persons if released on bail may abscond. It has gone further to demonstrate the basis of such fear. The investigating officer stated on oath that the 1st applicant is a foreigner who has no residence, passport or work permit in Kenya.

With respect to the 2nd applicant, the investigating officer stated on oath that he was arrested with the mobile phone of the deceased. This puts him in direct association with the 1st applicant. Other than that it is contested that he has any permanent residence, place of work, or gainful engagement in Kenya where he can be traced to attend his trial. He has neither demonstrated this through his supporting affidavit nor submissions before court.

I am persuaded therefore, that both accused pose a flight risk and by such risk are likely not to attend trial. It is to be remembered that the primary purpose of bail is to secure the attendance of the accused at trial. I have come to the conclusion that this purpose will not be met if the present applicants are released on bail. I find this to be a compelling reason not to admit the applicants to bail.

The applications are dismissed.

Ruling delivered and signed at Nairobi this 22nd day of July, 2013.

R.LAGAT-KORIR

JUDGE

In the presence of:

- :Court clerk
- :Counsel for the 1st Applicant
- :Counsel for the 2nd Applicant
- :Counsel for the Respondent