



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.57 OF 2012

1.DOMINIC SHIKORA.....1ST APPLICANT

2.JUSTUS KHAKAYI2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Dominic Shikora and **Justus Khakayi** are charged with the murder of Patrobas Hillary Amwoka. The offence is alleged to have been committed on 30th June 2012 at **Bottom-Line area in Kangemi** within **Nairobi County**. The accused were arraigned in court on 9th August 2012 when they pleaded not guilty to the charge and were remanded in custody. Both accused have now applied to be released on bail pending trial. Their applications dated 25th March 2013 and 28th March 2013 were consolidated for hearing hence this single Ruling.

The two applications are brought under **Article 49 (i) (h) of the Constitution** and on the grounds that the applicants have a constitutional right to bail and to be presumed innocent until proved guilty; that there are no compelling reasons to warrant their denial of bail; and, that they will attend their trial. Each of the applicants has sworn a supporting affidavit stating that he shall not abscond and will attend his trial.

Both applications are opposed by the State through the Replying Affidavit of **No. 39114 PC Maurice Mukara** sworn on 27th May 2013. The key averments in the Replying Affidavit are that the applicants were likely to interfere with the witnesses and would be tempted to abscond if released.

At the hearing of the application on 2nd July 2013, I heard submissions from **Mr. Mburu** and **Mrs Kinyori** for the 1st and 2nd accused respectively, and **Mr. Okeyo** for the State. Both defence counsel urged the court to find that there were no compelling reasons not to release the applicants. **Mr. Okeyo** on the other hand expressed the fear that the applicants would interfere with prosecution witnesses if released.

After considering the rival affidavits and submissions, as well as the law, I find that the respondent has not demonstrated to the court any compelling reasons to warrant the denial of bail. The respondent has only expressed fear that the applicants might interfere with witnesses and might abscond. It has failed to explain and demonstrate through fact and experience the real likelihood that the applicants will interfere with witnesses or indeed abscond. I reject the mere speculation.

In the premises, I allow the two applications on the following conditions:-

1. Each accused shall deposit cash bail of Kshs.1,000,000 or in the alternative execute a personal bond of Kshs.1,000,000 and provide 2 sureties of Kshs.1,000,000 each.
2. Each accused shall not interfere with the prosecution witnesses and any reported interference shall lead to the automatic cancellation of the bond.
3. Each accused shall report to the D.C.I.O. Kabete once every 2 weeks until further orders of this court.
4. Each accused shall attend court for the mention of this case once every month. The first such mention shall be on 3rd October, 2013

Ruling delivered, dated and signed at Nairobi this 28th day of August, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:-

Mosinko : Court clerk

Dominic Shikora : 1st Applicant

Justus Khakayi : 2nd Applicant

N/A Olando .: For the 1st accused/applicant

Olewe holding brief

for Kinyori : For the 2nd accused/applicant

Mr. Konga For the State/respondent