



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.45 OF 2009

REPUBLIC.....RESPONDENT

VERSUS

PETER KINYUA MWANGI.....ACCUSED/APPLICANT

RULING

Peter Kinyua Mwangi is facing trial for the murder of Mirriam Muthoni. According to the information dated 8th May 2009, the offence is alleged to have taken place on 22nd April 2009 at Kiangombe Embakasi within Nairobi Area. He took plea on 9th June 2009 before **Apondi J.** and denied the charge.

The accused has now applied for bail. In his application dated 7th May 2010 he seeks to be released on compassionate grounds owing to his ill-health. He also states that there was no likelihood of interference with witnesses since all of them have testified.

The application is opposed by the State through the Replying Affidavit of **No. 70406 PC Joseph Ologe** who is the Investigating officer in the case. His averments are to the effect that the applicant will be tempted to abscond in view of the evidence already tendered against him.

At the hearing of the application on 31st July 2013, I heard oral submissions from **Mr. Mathenge** and **Ms Ikol** for the applicant and respondent respectively. **Mr. Mathenge** submitted that there were no compelling reasons why the applicant should not be released; that the applicant had the right to be presumed innocent until proved guilty; and that there was no chance of interference with witnesses.

Ms. Ikol urged the court to deny the applicant bail in view of the overwhelming evidence already tendered; that in view of such evidence the applicant would be tempted to abscond.

I have considered the application. **Article 49(i) (h) of the Constitution** entitles an accused to be released on bail pending trial. It also vests in the court the discretion to deny or grant bail depending on the circumstances and facts of each case. This is the discretion that is exercisable by the court in determining whether or not there are compelling reasons. Such discretion must however be exercised judiciously.

In the present application, it is not disputed that the trial has progressed substantially. Infact the prosecution has closed its case and the parties are awaiting the Ruling of the trial Judge as to whether or not the applicant has a case to answer. I have perused the record and noted that the trial has been slowed down by the transfer of the trial Judges. The trial commenced on 9th June 2010 before **Lesiit J.** who heard 3 witnesses before she was transferred. Directions were then taken before **Ochieng J.** on 30th September

2010 who directed that the case proceeds from where it had reached. **Ochieng J.** heard only one witness before directing that the matter be heard by another judge in the murder section. On 3rd February 2012 **Ombija J.** proceeded with the trial and heard 3 more witnesses before the prosecution closed its case. As stated earlier, the case is now awaiting the ruling as to whether the accused has a case to answer or not.

While I am aware that bail can be granted at any stage of the trial, I am of the view that justice shall be served in this case by expediting the conclusion of the trial rather than allowing the application.

Finally, the applicant has stated in his application that he is of ill-health. I find however that his averment in the supporting affidavit has not been supported by any medical record. I am therefore disinclined to consider this ground.

In the premises and for the foregoing reasons I dismiss the application dated 7th May 2013.

Ruling delivered, dated and signed at Nairobi this 26th day of September, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the applicant

.....: For the state/respondent