



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 59 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

ERICK MBONDO MULONZI .....APPLICANT

RULING

The accused **Erick Mbondo Mulonzi** is charged with the murder of **PC Daniel Mobisa**. According to the information filed in court, the offence was committed on 13<sup>th</sup> May 2013 at South C estate within Nairobi County. The accused was arraigned in court on 30<sup>th</sup> May 2013 and upon his pleading not guilty was remanded in custody pending trial which is scheduled to commence on 5<sup>th</sup> March 2014.

The accused has now applied to be released on bail pending trial. His application is dated 14<sup>th</sup> June 2013 and was filed in court on 17<sup>th</sup> June 2013 through the firm of **Musyoki Mogaka & Co. Advocates**. In the application, the accused alleged to have been detained beyond the mandatory 24 hour limit before being presented in court having been arrested on 16<sup>th</sup> June 2013 and produced in court on 23<sup>rd</sup> May 2013. He is of the view that his continued detention and trial would be an illegality. He seeks in the alternative to be released on bail. He has expounded on these two grounds in his lengthy supporting affidavit sworn on 14<sup>th</sup> June 2013.

The application is opposed by the State through the replying affidavit of **No. 68944 IP Isaac Kiama** who is the investigating officer in the case. He depones with respect to the claim by the accused that he was held beyond 24 hours that the remedy thereof lies in a civil claim. He further avers that the applicant is not entitled to bail since there is strong circumstantial evidence that points to him as having some knowledge of the murder.

At the hearing of the application on 24<sup>th</sup> July 2013, **Mr. Mogaka** for the applicant abandoned the claim regarding detention beyond the mandatory period and instead prosecuted the application for bail only. He submitted that the applicant could be trusted to attend his trial as he had presented himself to the police prior to his arrest. He further submitted that the applicant has a fixed abode in Nairobi where his wife and child live in Plot No. 1075 in Umoja Estate.

In opposing the application, **Mr. Okeyo** for the respondent relied totally on the replying affidavit sworn by **IP Isaac Kiama**. He drew the attention of the court to paragraphs 3,4 & 5 of the said affidavit. He urged the court to exercise its discretion as provided by **Article 49 (i) (h)**.

From the replying affidavit and the oral submissions of the prosecuting counsel, it is apparent that the state opposes this application mainly on the ground that there exists strong circumstantial evidence

linking the applicant to the murder of the deceased. However, neither does the replying affidavit nor the submissions of prosecuting counsel give any pointer on the kind of evidence available to the prosecution which would enable the court form an opinion about the said evidence.

The prosecution has merely stated that there is strong circumstantial evidence. It has made no effort to describe and explain any fact or circumstances that would persuade the court to deny the applicant bail. It has not, as it were, demonstrated any compelling reasons why the applicant should be denied bail as required by **Article 49 (i) (h) of the Constitution**.

In the circumstances, having not found any compelling reason to deny the applicant bail, I allow the application on terms that will secure the applicant's attendance at trial. He shall be released on the following conditions:

- i. He shall execute a personal bond of Kshs.1,000,000 with 2 sureties of a similar amount.
- ii. He shall report to the investigating officer at Langata Police Station once every 2 weeks until further orders of this court.
- iii. He shall not interfere in any manner whatsoever with prosecution witnesses.
- iv. He shall attend the mention of his case once every month. The first such mention shall be on 23<sup>rd</sup> October, 2013.

**Ruling delivered, dated and signed at Nairobi this 19th day of September, 2013**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

- .....: Court clerk
- .....: Applicant
- .....: For the applicant
- .....: For the state/respondent