



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 76 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

DANIEL MUGABE SISO.....APPLICANT

RULING

The applicant in this case **Daniel Mugabe Siso** is accused of the murder of one Simon Murega. It is stated in the information dated 8th July 2013 that he committed the offence on 27th June 2013 at Karen Police Station Canteen Langata within Nairobi County. He denied the charge on 8th July 2013 and was remanded in custody. He now wishes to be released on bail. His application dated 22nd July 2013 is opposed by the State through the Replying Affidavit of the investigating officer, **No. 42666 Sgt. Lawrence Kiprono** sworn on 9th September 2013; and the submissions of the prosecuting counsel **Ms Magoma** tendered in court on 25th September 2013.

It is the State's position that it has strong evidence against the applicant which evidence is likely to lead to a conviction and sentence. It states in the Replying Affidavit that the applicant was seen stabbing the deceased and was arrested immediately after the incident. It is the State's position that with such evidence, the likelihood of the applicant absconding if released on bail is real. Secondly, the State fears that the applicant, being a police officer may interfere with witnesses who work in the police canteen at the Karen Police Station where the applicant lived. Thirdly, it is the State's view that it is in the interests of justice that the applicant be denied bail until the conclusion of the case.

The three reasons advanced by the State must be tested against the constitutional threshold set by **Article 49 (i) (h) of the Constitution** which gives any arrested person the right to be released on bail pending a charge or trial. This right is only to be limited by the existence of compelling reasons which warrant denial of bail. Secondly, where the State desires that an accused be denied bail, it must demonstrate to the court the existence of compelling reasons as envisaged under **Article 49 (i) (h) of the Constitution**. This duty has been amply explained by **Ibrahim J.** (as he then was) in **R. Vs Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008** wherein he stated;

“I do hold that if the prosecutor objects to the release of the accused from detention during the pendency of a trial, then at the first instance, the burden should be on the prosecution and not the accused to prove or at least demonstrate the existence of the “compelling reasons.”

See also **Republic Vs Patius Gichobi Njagi Nairobi Criminal Case No. 45 of 2012(UR)**. It must also

be remembered however that the court at all times retains the discretion to grant or not to grant bail taking into consideration the facts and circumstances of each individual case. Needless to state, the court is obligated to exercise such discretion judiciously.

The first limb of the State's argument relates to evidence. Whereas the evidence held by the prosecution may be compelling, it being primarily eye witness account, it must be pointed out that although the same may sustain a charge of murder (which indeed is a serious offence) the Constitution now allows any person charged with any offence to be granted bail. Secondly, the evidence alluded to is yet to be tested at trial. The court cannot therefore at this stage form an opinion whether or not the evidence is compelling. Consequently, I do not find this to be good reason to deny the applicant bail.

The second reason advanced by the prosecution is that the applicant was likely to interfere with witnesses. It emerged at the hearing that the applicant was a police officer who lived at the Karen Police Station the scene of the incident, but works at Kahawa Police Station. The quarrel between the applicant and the deceased was ostensibly over a civilian lady who worked at the police canteen. The applicant is said to have left the scene of the quarrel only to return later with a knife with which he fatally wounded the deceased. The prosecution has stated that the eye witnesses were and are still resident at Karen Police Lines.

The applicant argues that he will relocate to his rural home in Migori if released on bail. It is however apparent that the witnesses are well-known to him having lived together in the same police lines and having shared the same facilities including the police canteen; the scene of the incident. From these facts and circumstances, it is clear to me that the likelihood of interference with those witnesses cannot be ruled out. The fact of relocation to a rural site cannot obliterate the relationships that already exist between the applicant and the eye witnesses identified by the prosecution. I would on account of this reason alone be persuaded not to grant bail.

The final reason advanced by the prosecution is an omnibus one. They state that it is in the interests of justice that the applicant is denied bail. They aver in the replying affidavit of Sgt. Lawrence Kiprono and the submissions of the prosecution counsel that the case will be prosecuted expeditiously.

Whereas the State might have all the intention to prosecute expeditiously, this must be weighed against other constraining factors such as the high number of cases awaiting trial. I have however perused the record and noted that there are a total of 15 witnesses in this matter. That means that there is a possibility of the trial being concluded expeditiously.

Having carefully considered all the facts and circumstances in this case, I am of the view that an expeditious trial rather than grant of bail, would serve the interests of justice. In the result, I order that the matter be set down for trial.

The application for bail is dismissed.

Ruling delivered and signed at Nairobi this 29th day of October, 2013.

R.LAGAT-KORIR

JUDGE

In the presence of:

..... :Court clerk

..... :Applicant

..... :Counsel for the Applicant

..... :Counsel for the Respondent