



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 28 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

MILLER OGUGU MAKORI.....APPLICANT

RULING

The accused, **Miller Ogugu Makori** is charged with the murder of Naftali Mwareri Gikonyo. He is alleged to have committed the offence on 12<sup>th</sup> February 2013 at Kabete Flat in Kingeero Village, Kikuyu District within Kiambu County. His trial is set to commence on 20<sup>th</sup> November 2013. The accused (hereinafter applicant) now seeks to be released on bail pending trial. He states in his application dated 7<sup>th</sup> June 2013 and filed through the firm of **M.Njau & Mageto Advocates**, that he has a constitutional right to bail and to be presumed innocent until proven guilty. In his supporting affidavit, he states *inter alia* that there were no compelling reasons why he cannot be released; that the allegations of murder cannot be a proper basis to deny him his basic fundamental freedoms and human rights guaranteed in the bill of rights; that he was a student at Kenya Methodist University and has a home at Ongata Rongai; and, that he will attend court whenever required.

The application is opposed by the State vide the Replying Affidavit of **No. 76894 Cpl. Evans Omanga Mose** who is the Investigating Officer in the case. He states in the affidavit that the applicant is a flight risk since he does not have a fixed abode; and that the applicant was no longer a student at Methodist University having dropped out prior to committing the offence; that the applicant was likely to abscond given the likelihood of conviction and the severity of the attendant sentence.

At the hearing of the application on 25<sup>th</sup> September 2013, I heard submissions from **Mr. Mageto** and **Mr. Magoma** for the applicant and respondent respectively. **Ms Magoma** urged the court not to release the applicant for the reason that he was a flight risk. She submitted that the applicant had lied to the police in stating that he was a student at Methodist University and that he lived at Ongata Rongai. She further submitted that when the applicant was asked to call his parents upon arrest, he called and introduced different people as his parents. In her assessment, the applicant was not a trustworthy person who could be trusted to attend trial if released.

On the other hand, **Mr. Mageto** urged the court to release the applicant; firstly, because he has a constitutional right to bail and; secondly, because the State had not provided the court with any evidence to demonstrate that the applicant was not a student of Methodist University and did not have a home at Ongata Rongai.

Having considered the rival affidavits and submissions, it is apparent to me that the only reason advanced by the State in opposing this application is that the conduct of the applicant makes him

untrustworthy and raises doubt as to whether he will attend his trial if released on bail.

In considering this application, I have given due regard to the provisions of **Article 49 (i) (h) of the Constitution**. I have also given serious thought to the fear of the prosecution that the accused may not attend court if released. The fear is borne out of the fact that the applicant has in the past lied to the police that he was a student at Methodist University (while he was not) and that he lived with his parents at Ongata Rongai (while the parents were separated and he did not live with them at Ongata Rongai).

The two statements above do not paint a picture of one who can be trusted. However, other than making the statements on both the Replying Affidavit and the submissions in opposition, the State has not laid before the Court any evidence to support the two allegations. It is to be remembered that the duty to demonstrate compelling reasons lies primarily with the prosecution. See **Republic Vs- Danson Mgunya & Anor, [2010] eKLR**.

In this application, I find that the prosecution has not demonstrated to the satisfaction of the court the existence of compelling reasons why the applicant cannot be granted bail.

I will therefore admit the applicant to bail. However in order to secure his attendance at trial, I impose the following conditions:-

- i. He shall execute a personal bond of KShs.500,000/- with 4 sureties of KSh. 500,000/- each two of whom shall be his parents.
- ii. He shall provide documentary proof of his continuing student status at the Methodist University.
- iii. He shall provide proof of his permanent residence and address and inform the Deputy Registrar of the Court every time he changes such residence and address.
- iv. He shall not leave the jurisdiction of the court without leave of the court.
- v. He shall attend court for the mention of his case once every month.
  
- vi. He shall report to the investigating officer at Kikuyu Police Station once every 2 weeks until further orders of this court.

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

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the applicant

.....: For the State/respondent