



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO.17 OF 2013

REPUBLIC PROSECUTOR

VERSUS

ROBERT NJOROGE KAMAU ACCUSED

RULING

By a notice of motion dated 17th April 2013, brought pursuant to provisions of **Article 49(1)** of the **Constitution**. The accused prays to be released on bail pending the hearing and determination of his trial.

The application is premised on grounds that the new Constitution guarantees persons charged with criminal offences, a right to bond on reasonable terms.

The accused was charged with murder contrary to section 203 as read with section 204 Penal Code. He denied the charge and is currently held at the GK Nakuru Main Prison. He undertakes to abide by the terms and conditions this court may impose when granting him bond, and he pledges to attend court without fail on all dates when so required.

The accused states in his supporting affidavit that, he was arrested on 20th February 2013, and has been in custody ever since. He describes himself as the sole breadwinner for his family, and the children are suffering, as their mother is an unemployed housewife. It is his contention that there is no compelling reason to warrant his continued detention at the prison. He points out that, he has never engaged in illegal activities nor does he intend to do anything that may violate conditions associated with being out on bond.

The application is opposed, and in an affidavit sworn by **P.C. Samuel Kamau Karanja**, it is deposed that upon receipt of reports that applicant had murdered one PAUL KARANJA WAMBUGU on 9/12/2012, he disappeared and was only traced to Voi on 16th February 2013. His escape to Voi had been facilitated by members of his family. Apparently after the incident, enraged members of the public wanted to lynch the applicant and even set his house ablaze.

After his arraignment in court, members of his family have threatened some of the prosecution witnesses, including Francis Mbuthia Karanja, who reported the threats to police – it is feared that these threats will be heightened should the applicant be released on bond with the result that some witnesses might not attend court at the hearing.

In an affidavit sworn by his father KAMAU NJOROGE MBUGWA, he states that the escape to Voi was to save the applicant's life, but no member of the family has issued any threats to witnesses.

Four witnesses have testified in this matter, and prosecution indicated there were four more to be called. From the witnesses' statement annexed, it would appear the remaining are the formal witnesses. I think the issue of threat to witnesses does not arise at this stage.

However the bigger concern is whether the accused is likely to attend court once released on bail. It is not denied that after the incident, the accused disappeared until about three months later that he was traced – more than 1000km away from the area of jurisdiction. Certainly the accused had his right and freedom of movement, but the vast distance for relocation is suspect – I doubt that it demonstrates fear, it certainly creates suspicion about the bona fides of the accused. If he truly feared for his life, then there is no evidence that reports concerning the feared threats were reported to police.

If, only in the face of a challenge, the accused's family ensured he relocated out of the Rift Valley Province, then what about in an instance where the accused faces prospects of a death sentence. I think the temptation to flee will be greater. It is on account of this that I decline to grant the prayer for bail.

Delivered and dated this 26th day of November, 2013 at Nakuru.

H.A. OMONDI

JUDGE

Accused absent

Miss Rugut for State

Mr. Maragia for Accused