



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.75 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

FRANCIS MAKORI MBATI.....APPLICANT

RULING

Francis Makori Ombati is the accused in Criminal Case No. 75/2013. He is charged with the murder of **Vincent Ambuya**. According to the information filed in court he committed the offence on 3rd July 2013 at Kayaba Slums in Industrial Area within Nairobi County. When arraigned in court on 17th July 2013, he denied the charge and was remanded in custody.

The accused has now applied to be released on bail pending trial. He bases his application on **Articles 2 (4); 49 (i) h and 50 (2) (a) and (b) of the Constitution**.

The application is opposed by the State vide the Replying affidavit of the Investigating Officer **No. 58721 Cpl. Otieno** and the oral submissions of **Mr. Konga** who is the prosecuting counsel in the case. It is the State's contention that the accused has no fixed abode and therefore likely to abscond; and that there is no evidence that the accused suffers tuberculosis; that there was sufficient evidence to sustain the charge; and that the accused was likely to flee the jurisdiction of the court.

On the other hand it is the contention of the accused through his counsel, **Mr. Saini** that there was no evidence to support any of the averments by the Investigating Officer. In particular, the accused contends that he is a Kenyan and lives at Tetra Pack slums within Nairobi from where he was arrested and that he has no intention of fleeing the jurisdiction of the court.

In this application, it is apparent that the main concern for the prosecution is that the accused may fail to attend trial and abscond because he has not demonstrated that he has permanent residence. Having considered the application in totality however, I do not find the prosecution's arguments convincing. It cannot be taken that an applicant who has no permanent residence will automatically flee jurisdiction. There has to be sufficient reason to lead to such a conclusion.

In the result, I find that the prosecution has not demonstrated to my satisfaction the existence of compelling reasons why the accused should be denied bail. I therefore admit him to bail in the following terms:-

- i. Accused shall pay cash bail of Five hundred thousand shillings (Kshs.500,000./-) and one surety

- of similar amount or in the alternative execute a personal bond of Kshs.500,000/- and 2 sureties of KShs.500,000/- each.
- ii. The accused person shall not interfere with the prosecution witnesses and shall not in any manner whatsoever interfere with the prosecution witnesses. Any such interference shall lead to the automatic cancellation of this bond.
 - iii. Upon release, he shall report to the Investigating Officer at Industrial Area Police Station once every three weeks until further orders of this court. A compliance report thereof shall be filed with the court by the Investigating Officer through the prosecutor during every routine mention of the case.
 - iv. The accused person shall attend court for the mention of his case once every month. The first of such mentions shall be on 29th January, 2013.

Ruling delivered, dated and signed at Nairobi this 21st day of November, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

-: **Court clerk**
-: **Applicant**
-: **For the applicant**
-: **For the State/respondent**