

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 37 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

FRANKLINE OTIENO ASILI.....APPLICANT

RULING

Frankline Otieno Asili is facing trial for the murder of John Ngige Gitau. The particulars of the charge are that on the night of 28th and 29th August 2009 at Ruku Village in Kiambu County jointly with others not before court murdered **John Ngige Gitau**.

The accused now wishes to be released on bail pending the conclusion of his on-going trial. He cites **Article 49 (i) h of the Constitution** as entitling him to bail. He further cites his constitutional right to be presumed innocent until proven guilty arguing that his detention before trial violates his right under **Article 50 (2) (a) of the Constitution**. In arguments in support of the application, **Mr. Keengwe** for the applicant urged the court to disregard the seriousness of the charge as the same was covered by **Article 49 (i) h**. He submitted that the applicant would attend his trial to completion and further that being a man of straw, he had no means of interfering with prosecution witnesses or fleeing the jurisdiction of the court.

The application is opposed by the State through the sworn affidavit of **No. 64168 Sgt. Damaris Matiri** and through arguments advanced at the hearing by **Ms. Onunga** the prosecution counsel. It is the State's view that the applicant was likely to flee the jurisdiction of the court owing to the seriousness of the charge and the attendant sentence upon conviction. While admitting that the case against the accused is built on circumstantial evidence, prosecuting counsel urged the court to exercise discretion not to grant bail but to proceed with the trial to conclusion.

In considering this application I have carefully weighed the arguments for and against the application. I am guided by **Article 49 (i) (h) of the Constitution** which entitles the applicant to seek bail. I am also alive to the fact that an accused person can be granted bail at any stage of the proceedings.

However, it is to be observed that the court has discretion to grant or not to grant bail depending on the facts and circumstances of each case. In this case, I observe that the trial is on-going with 2 witnesses having already testified. The record also shows that although the prosecution has listed 20 witnesses in the committal bundle, prosecution counsel did inform the court on 18th September 2013 that the prosecution was going to call a total of 8 witnesses only.

In the circumstances, I am disinclined to admit the applicant to bail. I order that the case be set down for further hearing and that the prosecution presents all its witnesses on the scheduled dates for the trial to be concluded expeditiously.

The application is dismissed.

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