



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

**CRIMINAL CASE NO. 61 OF 2011**

REPUBLIC.....RESPONDENT

VERSUS

WILFRED MWITI.....APPLICANT

**RULING**

The accused **Wilfred Mwiti** is facing trial for the murder of Patrick Ndai Munyua. According to the information dated 27<sup>th</sup> July 2011, he committed the offence on 18<sup>th</sup> February 2010 at Kariobangi Kiamaiko junction along Outer Ring Road in Nairobi. He was arrested on 25<sup>th</sup> May 2011 and upon being arraigned in court denied the charge and was remanded in custody. He now seeks to be released on bail.

The application dated 12<sup>th</sup> October 2012 is brought on the grounds that the offence is bailable and that the applicant will abide by any conditions imposed by the court. The applicant states in his supporting affidavit that he was initially arrested and released before being re-arrested after 3 months and charged; that he is a law abiding citizen and will live peacefully with members of society if released; that the shooting of the deceased was a legitimate exercise of police duties and occurred when there was a shoot-out between the attackers and the police officers.

The application is opposed by the State through the Replying Affidavit of Prosecuting Counsel **Daniel Karuri** sworn on 8<sup>th</sup> November, 2012. He avers that the civilian witnesses may be intimidated by the applicant if released on bail; that the applicant admits in his supporting affidavit that he shot the deceased and may therefore abscond to avoid being convicted; that it is in the interests of justice to deny the applicant bail.

At the hearing of the application on 18<sup>th</sup> September 2013, I heard submissions from **Mr. Okatch** and **Mr. Karuri** for the applicant and respondent respectively.

In this application from the replying affidavit and the submissions of the prosecuting counsel, it is apparent that the State opposes the release of the applicant on two grounds. First it is the fear of the State that the applicant may intimidate witnesses; and secondly, that he may abscond and not attend trial.

On the issue of the witnesses, **Mr. Karuri** submitted that the accused was a police officer and that his release may cause fear in the civilian witnesses. **Mr. Okatch** on his part argued that the applicant was initially arrested and released before he was re-arrested after three months and charged and that during that period he did not intimidate the civilian witnesses. He submitted that there was no demonstration that the witnesses would feel intimidated. He discounted **Mr. Karuri's** argument that the applicant may use his position as a police officer to access a firearm or influence fellow police officers who are witnesses in

the case, or in any way intimidate the civilian witnesses.

On this issue of interference with witnesses, I have held before that interference with prosecution witnesses is a grave matter not to be taken lightly by the court. Indeed interference with witnesses is an affront to the administration of justice and is therefore a compelling reason under **Article 49 (i) h**. See **Republic –Vs- Patius Gichobi Njagi & 3 others, Nairobi Criminal Case No. 45 of 2012**. See also **Republic Vs Joktan Mayende & 3 others [2012] eKLR, Bungoma Criminal Case No.55 of 2009**. In this application, however, I am not persuaded that the applicant may have access to a firearm as suggested by **Mr. Karuri**. Nonetheless, I share the reasoning and persuasion of my brother **Ochieng J.** in his earlier ruling rejecting the applicant’s first application that civilian witnesses would have legitimate fears for their safety if the applicant were released. I therefore need not say more on this issue.

The second reason for which the State opposes the application is the likelihood of the applicant absconding. On this, prosecuting counsel has drawn the court’s attention to the averment at paragraphs 10 & 11 of the applicant’s supporting affidavit. In the two paragraphs the applicant avers that the deceased was shot dead by the applicant and his colleagues in an exchange of fire between the deceased and the police. He also avers that the shooting of the deceased was a legitimate exercise of police duties as the attacker was armed.

Whereas these averments cannot be used against the applicant without considering the totality of the evidence yet to be adduced and tested at trial, the averments suggest and indeed support the prosecution’s submissions that the applicant may indeed abscond and not attend trial if released. The fear of possible conviction may motivate him to abscond trial. It is to be remembered that the primary purpose of bail is to secure the accused’s attendance at trial. See **R. Vs Danson Mgunya & Anor, 2010 eKLR**.

I am in the circumstances of this case persuaded that the applicant may not attend his trial if released. This in my view is a compelling reason that warrants denial of bail.

The application is thus dismissed.

**Ruling delivered, dated and signed at Nairobi this 21<sup>st</sup> day of November, 2013**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

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