



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO.24 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

SIMON KIILU KIOKO.....APPLICANT

RULING

Simon Kiilu Kioko is charged with the murder of Elizabeth Munyiva Muteti. According to the information dated 14th February 2013 he is alleged to have committed the offence on 21st/22nd January 2013 at Munyu village within Kiambu County. He now seeks to be admitted to bail pending trial.

The application dated 24th July 2013 is stated to be premised on **Articles 20, 22, 27, 28, 29, 49** and **50** of the **Constitution**.

The grounds set out are that the offence is bailable under the Constitution; that the applicant has a qualified constitutional right to be released unless there are compelling reasons; that he has the right to be presumed innocent until the contrary is proved; that he is on therapy for immuno deficiency syndrome and requires better attention outside prison custody; and, that he will avail himself to attend trial. These grounds are amplified in the supporting affidavit sworn by the applicant on 24th July 2013.

The application is opposed by the State through the Replying Affidavit of **No. 80149 Cpl. John Nganga** and the submissions of **Mr. Okeyo**, the learned prosecution counsel. The main ground for opposition is that the applicant was likely to influence two key prosecution witnesses, namely George Mbugua and Kimani Mwati who are said to be his friends and hail from the same place. Secondly, it is the State's position that the applicant has no known place of permanent residence other than his previous place of employment and was therefore a flight risk.

While urging the application, **Mr. Amutala** the learned defence counsel submitted that the sole purpose of bail is to secure the accused's attendance at trial and that there were no compelling reasons for the applicant to be denied bail. He beseeched the court to grant the accused bail to enable him access better care owing to his medical status.

I have carefully considered the application in totality. **Article 49 (i) (h) of the Constitution** gives an accused the right to bail. Such right may however be curtailed by the court where there are compelling reasons. As stated above, the State fears that the applicant may interfere with some prosecution witnesses.

Interference with prosecution witnesses is in my view a compelling reason envisaged under **Article 49 (i) h**. However, for the court to be persuaded that an accused may interfere with prosecution witnesses, there must be a clear demonstration of facts or circumstances that show the nexus between an accused and the witnesses which can be said to place an accused at a point of power or influence over the witnesses or conversely place the witnesses in a position of collegiality, fear, sympathy or other vulnerability.

In this particular case, it has not been shown to me that the two witnesses named are in any way in a position of vulnerability, familial relationship or other close association with the applicant that would create a real possibility of their witness status or testimony being compromised or interfered with in any way by the applicant.

The second issue in this application is the possibility of the applicant absconding. It is the prosecuting counsel's position that the applicant's place of abode is not known and therefore he may abscond. Such a fear is indeed legitimate. However, where an accused/applicant has no permanent place of abode, the court would ordinarily not deny him bail but ensure that he provides suitable sureties whom the court can count on to produce the accused whenever required in court. To deny an applicant bail purely on the basis of not having a permanent place of abode would, in my view, be discriminatory because applicants who have no permanent places of abode or shelter to their name would be denied their right to bail. A final issue in this application is the medical status of the applicant. He has attached medical reports to his application which show that owing to his medical status, he requires medical and nutritional care not easily accessible at the prison. I observe that the same has not in any way been displaced by the prosecution. I therefore find no reason to doubt the authenticity of the averments in the applicant's supporting affidavit and the submissions of his counsel in this regard.

In the result, I find this application one in which the discretion of the court can be exercised in favour of the applicant. He is admitted to bail on the following conditions:-

- i. The accused shall pay cash bail of 500,000 and 1 surety of similar amount or in the alternative execute a personal bond of 500,000/- and 2 sureties of 500,000/- each.
- ii. He shall provide evidence of permanent abode and inform the court every time he changes such abode.
- iii. He shall not contact, intimidate or in any manner whatsoever interfere with the prosecution witnesses. Any such interference shall lead to the automatic cancellation of this bond.
- iv. He shall report to the Investigating Officer at Makongeni Police Station twice weekly until further orders of this court.
- v. He shall attend court once monthly for the mention of his case. The first such mention shall be on 29th January, 2014.

Ruling delivered, dated and signed at Nairobi this 5th day of December, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: **Court clerk**

.....: **Applicant**

.....: **For the applicant**

.....: **For the State/respondent**