

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 58 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS MUOKI MUEMA.....ACCUSED

RULING

The accused herein, Julius Muoki Muema, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of this charge state that on the 13th day of August 2019 at Dhawabu area in Kayole within Nairobi County the accused murdered Walter Mumo. The accused has pleaded not guilty to the charge.

By a Notice of Motion dated 26th September 2019 and filed on the same date, the accused has approached this court seeking to be admitted to bail/bond pending the hearing and determination of this case. He has filed an affidavit in support of the application.

I have read the Notice of Motion and the affidavit. I have also considered the submissions made in court by Mr. Wamalwa on behalf of Mr. Keengwe for the accused. In summary the grounds advanced in support of the application by the accused are that the offence of murder is bailable; that the accused has a constitutional right to bail on reasonable grounds; that the accused is presumed innocent until the contrary is proved; that he is not a flight risk and that he is a Kenyan citizen with fixed abode; that at the time of his arrest the accused lived in Kayole where he was running a small business and that he has furnished the investigators with all the particulars of where he comes from including County, location, the area chief and the nearest police station. The accused further states that he is willing to abide by the terms and conditions of bail that this court will give. He states that he will not interfere with witnesses because.

Mr. Wamalwa submitted that the prosecution has not demonstrated that the accused has attempted to reach the mother of the deceased after she left Nairobi to her rural home. Further he submitted that it has not been demonstrated that the accused knows or has visited the home of the mother of the deceased and that the accused comes from Kaiti in Makeni County while the mother of the deceased comes from Mwingi in Kitui County. He submitted that what is contained in the Replying Affidavit is mere apprehension and this cannot be used to deny the accused bail.

The application is opposed. While relying on the Replying Affidavit of PC Victor Odhiambo, the Investigating Officer, prosecution told the court that bond is not an absolute right and can be denied where compelling reasons exist; that the key witness is a minor and vulnerable and that the accused threatened to kill her if she reported the matter to the police. It was further submitted that the accused went missing for two weeks before he was arrested by the police and therefore he is not fit to be admitted to bail.

In response Mr. Wamalwa submitted that the Replying Affidavit does not indicate that the accused went into hiding nor does it show sources of information contained in it.

I have considered the application. It is trite that bail is a right that is available to all accused persons irrespective of the offence. However, the right to bail is not absolute. It can be limited where compelling reasons are shown to exist. I have considered what the prosecution presented as compelling reasons. To my mind, the contents of paragraphs 2 and 3 of the Replying Affidavit amount to evidence. There is nothing attached to the affidavit to back these allegations. It is stated that the accused will interfere with the key witness and her mother. In response the defence states that the accused does not know the home of the key witness and her mother since they come from Mwingi in Kitui County while the accused comes from Makeni County.

Having considered the application and the applicable law as well as the relevant authorities including the cited authority **Republic v. Kokonya Muhssin [2013] eKLR**, I am satisfied that the prosecution has not demonstrated compelling reasons to persuade this court to decline this application. In my view what is deposed in the Replying Affidavit is apprehension without evidence to back this up. I agree with the prosecution that a balance must be struck to ensure ends of justice are met. Before admitting an applicant to bail/bond, the court normally puts in place terms and conditions of bail to ensure that the attendance in court of an accused person is secured and that he does not do anything that might compromise the fair trial. For these reasons I will and do hereby allow this application and admit the accused to bail pending the hearing and determination of this case. However before setting out the terms and conditions of bail, I will refer this matter to the Probation Office for a detailed report of the social circumstances of the accused and all the relevant information regarding the victims. The report shall be filed within two weeks from today. It is so ordered.

Dated, signed and delivered this 14th day of October 2019.

S. N. Mutuku

Judge