

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE 51 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

DANIE GITHINJI NJERI.....ACCUSED

RULING

Daniel Githinji Njeri, the accused herein, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 24th December 2017 in Zimmerman Estate within Nairobi County with others not before the court the accused murdered Joseph Ng'ethe Kiarie.

The accused was brought to court on 27th August 2019 but the plea was not taken until 10th September 2019 when he pleaded not guilty to the charge. Following that plea, the accused has now come to court seeking to be admitted to bail pending the hearing and determination of this case. The application was argued verbally. Mr. Omenge counsel for the accused told the court that a person charged with any offence including murder can be admitted to bail under the laws of this country; that the accused has unqualified constitutional right to be presumed innocent until proved guilty; that the accused will present himself to court; that he has a place of abode in Githurai where he resides and that he has never absconded. It was submitted further that there are no compelling reasons advanced to deny the accused bail/bond. He asked the court to admit the accused to bond/bail on reasonable conditions.

The application is opposed. The prosecution counsel in opposing the application relied on the Replying Affidavit of SGT Charles Musyimi the Investigating Officer. The grounds in opposition are that while bail is a right under Article 49 (1) (h) of the Constitution, it is not an absolute right and can be denied where compelling reasons exist; that the accused does not qualify to be admitted to bail/bond because there is irrefutable evidence against him; that the accused went into hiding after the offence was committed on 24th December 2017; that for one year and eight months his whereabouts remained unknown and that in an attempt to apprehend him the deponent had to use his phone and identification to track the accused down. It was stated that the accused has no fixed abode given the trouble the police went through trying to trace him and therefore the fear that the accused may abscond is real.

I have considered the applications and the grounds in support and in opposition. I have considered that bail/bond is a constitutional right but I am alive to the fact that this right is limited and can be denied where in the discretion of the court there are compelling reasons. I have considered the great lengths the police had to go to in order to have the accused apprehended. The issue of accused attending court once granted bail is central to the meeting ends of justice and therefore it cannot be overlooked. In my considered view, given the contents of the Replying Affidavit and the time it took for the police to apprehend the accused, that there is a risk in admitting the accused to bail. Consequently, I decline to allow this application. I order that this case be fixed for hearing in the earliest time available to ensure that it is concluded without delay. The application for bail is hereby denied. Orders shall issue accordingly.

Dated, signed and delivered this 7th day of November 2019.

S. N. Mutuku

Judge