

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 22 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN OTIENO.....ACCUSED

RULING

Stephen Otieno, the accused herein, is charged with the murder of Tamara Deborah alias Njoki contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed between 18th and 26th August 2017 at an unknown time at Riruta Satellite in Dagoretti Sub-County within Nairobi County. The accused denied committing this offence.

This is an application for bond/bail. Mr. Wakaba, basing his arguments on the Replying Affidavit by the accused dated 17th October 2018, submitted that the circumstances under which the alleged offence was committed have not been proved in court and remain mere allegation and that from the time the affidavit and supplementary affidavit were filed to date, the prosecution has had adequate time to investigate the allegations of threats to the witnesses but they have not done so. Mr. Wakaba submitted that the existence of relationship between the accused and some witnesses is not a bar to admit the accused to bond/bail unless there is evidence that accused's release will affect the witnesses. It was submitted that the accused is willing to re-locate from where he used to reside to his rural home in Kisumu. It was submitted that the prosecution has not discharged its burden of proving compelling reasons and that the annexures to the affidavits have not been subjected to cross-examination to determine their veracity. It was submitted that the accused will abide by the terms and conditions of bail set by this court. Mr. Wakaba urged that this court sets affordable conditions because the accused comes from humble background.

The application was opposed by the prosecution. The grounds in opposition are contained in the affidavit of PC Edward Onyango dated 13th June 2018 and the supplementary affidavit by the same officer dated 13th August 2018. I have read the affidavits under reference. They contain averments in respect of the circumstances under which the alleged offence was committed and the arrest of the accused. They also contain averments in respect to threats by the accused to the mother of the deceased and other relatives. It is deposed that the accused has been making these threats even when he is in custody.

I have read the court file. What did not come out clearly during these proceedings is that a bail application based on the same affidavits by the prosecution and the Replying Affidavit by the accused was canvassed before Hon. Justice Wakiaga and a ruling to that application was delivered on 1st November 2018. The court declined to allow the application in essence denying the accused bail/bond. Paragraph 13 of the Ruling states as follows:

“The accused shall remain in custody but is at liberty to renew his bail application once all witnesses related to him or were his neighbours have testified and it is so ordered.”

My perusal of the court file discloses that this matter is still fresh and no witness has testified. It was allocated to this court on 23rd July 2019 and was first mentioned in this court (Court No. 4) on 5th July 2019. This means that the situation remains as it was as at the time Justice Wakiaga delivered his decision of the bail application. I do not understand why the defence did not bring it to the courts attention that the matter is coming back to court as an application for review of the earlier application. Without taking much time on the matter, it is my finding and I so hold that the application is misconceived and an abuse of the court's process. It is hereby dismissed. As ordered by Justice Wakiaga the accused shall remain in custody. Orders shall issue accordingly.

Dated, signed and delivered this 10th day of December 2019.

S. N. Mutuku

Judge