



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 61 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LIVINGSTONE LILUMBI MURULI alias LEVI.....ACCUSED**

**RULING**

The accused herein is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on the night of 21<sup>st</sup> November 2018 at about 11.00pm in Riruta Satellite area within Nairobi County he murdered Lucy Akoth. The accused denied committing this offence. The trial commenced on 25<sup>th</sup> June 2019 and so far the prosecution has presented evidence of seven (7) witnesses. On 16<sup>th</sup> October 2019 the trial was deferred to 23<sup>rd</sup> and 24<sup>th</sup> March 2020. On that date the prosecution informed the court that there are three (3) remaining witnesses before they close their case. Upon the matter being adjourned defence counsel asked the court to hear a bail application.

I have noted that the application by the accused to be admitted to bail is dated 21<sup>st</sup> June 2019 and was filed on 24<sup>th</sup> June 2019. It was not prosecuted. The grounds in support of the application are found on the face of it and in the supporting affidavit sworn by the accused. The ground are that the accused enjoys a constitutional right to be presumed innocent until the contrary is proved; that he enjoys constitutional right to liberty unless compelling reasons are proved and that he should not suffer pre-trial detention pending the determination of this case. In his supporting affidavit he deposes that he will continue being a productive member of the society if released; that he has strong family ties and that he will reside with his parents in Kivuli Centre Kaberia in Nairobi; that he is not a flight risk; that the minor witness HB was taken by accused's father in law and the he does not know where she resides and therefore he cannot intimidate or interfere with her; that the prosecution has not presented compelling reasons to prevent his release on bail/bond; that he will obey courts directions until the case is finalised and that the strength of the prosecution case cannot be confirmed at the stage the application was filed.

In his submissions on behalf of the accused, Mr. Wakaba reiterated the grounds in support of the application advanced by the accused and added that the prosecution has not yet proved the case against the accused and further that the accused is still presumed innocent until there is proof to the contrary. It was submitted that the report from the government analyst is not ready and it is not known when it will be ready hence the prayer to have the accused admitted to bail to ensure he is not held in detention for long as we await that report.

The application is opposed by the prosecution. In opposing the application, the prosecution is relying on the Replying Affidavit of PC Martin Njagi sworn on 20<sup>th</sup> November 2019. The prosecution urged that the court considers all facts of the case when considering this application. It was submitted in opposition that the accused is now aware of the evidence against him after the evidence of the seven prosecution witnesses has been adduced and may be tempted to abscond; that the accused has no known fixed abode and that the accused knows the prosecution witnesses who testified and there may be reprisals.

The prosecution counsel submitted in support of the grounds in opposition and told the court that the evidence against the accused is strong and that the accused is likely to interfere with witnesses.

I have considered the application and the grounds in support and in opposition. I have considered that the law guarantees an accused person certain rights such as right to be released on bond, the right to liberty and right to be presumed innocent until the contrary is proved. The right of an accused person to be released on bail is not absolute. The law (Article 49 (1) (h) of the Constitution) allows the court to discretion to allow or deny an accused person bond/bail where compelling reasons exist. The factors that courts have been considering as compelling reasons include but are not limited to:

- (i) The accused person being a flight risk.
- (ii) The relationship between the accused and witnesses.
- (iii) Protection of the victims of the crime.
- (iv) The likelihood of interference with witnesses.
- (v) The strength of prosecution case.
- (vi) Nature of the offence and seriousness of the punishment upon conviction.

It is trite that the paramount consideration by the court in bail/bond applications is whether the accused will turn up for the trial. Failure of an accused to turn up for the trial compromises fair trial and course of justice. The factors that constitute compelling reasons are aimed at this paramount consideration. As I have stated earlier, the application for bail was made before the hearing in this matter commenced. At that

time it was in order to state that the evidence by the prosecution was not known nor was its veracity tested through cross-examination. I have noted that seven witnesses have so far testified for the prosecution. I have read their evidence. Without seeming to pre-empt the outcome of this case it is my view that an application for Bail/bond can be denied where the court considers that the prosecution has presented a strong case against the accused person. Even though further evidence is yet to be adduced, I have considered the evidence that is already before the court and my view is that the reasons advanced by the prosecution in opposition to this application amount to compelling reasons. In the interest of justice it is prudent for this court to decline this application. In view of this I hereby decline to grant this application and order that the accused remains in custody pending the conclusion and determination of this case. Orders shall issue accordingly.

**Dated, signed and delivered this 9<sup>th</sup> day of December 2019.**

**S. N. Mutuku**

**Judge**