



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO 7 OF 2018

KENNETH NAPUTA ESHO.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR/RESPONDENT

RULING

1. The applicant has through his notice of motion dated 12th November 2018 applied for bail pending hearing and determination of his trial pursuant to the provisions of article 49[1] [h] of the 2010 Constitution
2. The applicant's application is supported by both the grounds set out on the face of the notice of motion and his 10 paragraphs supporting affidavit dated 12th November 2018.
3. The major grounds in support of the application of the application are as follows. He has stated that the situation on the ground is calm and conducive to his being released on bail. He has also stated that the key prosecution witnesses have testified and for that reason he cannot interfere with them. Finally, he has stated that he will abide with all the terms and conditions which the court will impose.
4. In his supporting affidavit the applicant has deponed to the following major matters. He has averred that he was arrested in connection with the murder of the deceased in respect of which five witnesses have testified in court and that only the investigating officer is the remaining witness, who has not testified. He has further deponed that he is a person of fixed abode and that following the burial of the deceased, there is no tension at home and his life is will not be at risk, if released. He has finally deponed that there are no compelling reasons to deny him being released on bail.
5. In addition to the foregoing, counsel for the applicant, Mr. Meingati has filed written submissions in support of the application citing a number of authorities, which I have considered.
6. The prosecution has opposed the application on the grounds that the applicant is a flight risk and that the applicant is charged with a serious offence that carries a severe sentence namely death. I have considered the applicant's affidavit evidence and the prosecution. I find the following to be the issues for determination.

ISSUES FOR DETERMINATION

1. Whether or not the applicant is a flight risk
2. Whether or not there is tension that may endanger the applicant's security
3. What are the appropriate orders to be made?

ISSUE 1

7. The evidence on record is that soon after the alleged commission of the offence the applicant escaped from the scene of murder and was arrested after being traced to Narok town. In the circumstances I find that the applicant is a flight risk. This is a compelling reason within the meaning of article 49 of the Constitution.

ISSUE 2

8. There is evidence from a number of witnesses, who testified that the applicant is provocative even when he is not drunk. This evidence was not challenged when the prosecution witnesses were being cross examined. In paragraph 7 of his affidavit evidence the applicant

averred that: *“THAT circumstance [sic] have greatly changed and since the deceased was buried, there is no tension on the ground to warrant my detention and that there is no risk to my safety when released.”* It appears from his affidavit that there was tension at some stage following the commission of the offence, which he now avers does not exist. This is a bare assertion, which does not indicate the source of his information. I do not believe him. In the circumstances, given his provocative nature, it is not safe to grant him bail, since his personal security will be at risk. In terms of section 123A of the Criminal Procedure Code [Cap 75] Laws of Kenya, the accused shall be kept in custody for his own protection.

Issue 3

9. The upshot of the foregoing is that the applicant’s application fails with the result that it is hereby dismissed in its entirety.

Ruling delivered in open court this 5th day of December, 2018 in the presence of Mr. Meingati for the appellant and Ms Torosi for the state.

J. M. Bwonwonga

Judge

5/12/2018