



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL MURDER CASE NO. 10 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

COLLINS WAFULA MAKALI.....ACCUSED

RULING

1. Before me is an application dated 5th January 2017, by **COLLINS WAFULA MAKALI** the applicant herein asking this court to admit to bond/bail pending trial. The applicant has invoked the provisions of article 2 (1) & (4), 20(4), 24 (1) (e) and 49(1)(h) of the Constitution and the main ground for the application is that the applicant is entitled to the right of presumption of innocence and right also to bail.

2. In his Supporting Affidavit sworn on 5th January, 2017, the applicant has deponed that he is not a flight risk and that he has a permanent place of abode. He has further deponed that he is ready and willing to abide by all the terms including attending all mentions and trial sessions without fail.

3. The state through the office of DPP represented by learned counsel, Miss Ndobi expressed no objection to this application and conceded that the applicant can be granted bond.

4. I have considered this application which I must state from the onset that the Applicant should have moved this court by way of motion rather than Chamber Summons which have now been overtaken by rules of procedure in this court. That however is an insignificant technical matter that cannot affect the substance of the application before me. A right to bail/bond is a constitutional right under Article 40(1)(h) of the Constitution. The same right is premised on the right to presumption of innocence provided under Article 50(2)(a) of the Constitution of Kenya 2010. That right to bail is not absolute but limited where compelling reasons are advanced by the prosecution. In this application as already stated above, none has been put forward by the respondent herein. I have had occasion of perusing through the social inquiry report on the accused person and I find no reason to deny the applicant herein his right to bail. It should not be lost however that the case facing the accused person is serious which calls for commensurate terms to ensure attendance of the applicant to the court whenever required to do so. In the premises, I am inclined to allow the application dated 5th January, 2017. The Applicant is admitted to a bond of Kshs.1 million with a surety of a similar amount. If released he is required to strictly attend court on time whenever required to do so.

Dated and delivered at Chuka this 17th day of January 2017.

R.K. LIMO

JUDGE

17/1/2017

Coram:

Before R.K. Limo (J)

Pros- Miss Ndombi -state counsel

C/A- Murithi

Accused - present

Mutuma for Accused - present

Ndombi for state - present

Court:

Ruling signed, dated and delivered in the open court in the presence of Mutuma for Accused and Ndombi for the state.

R.K. LIMO

JUDGE

17/1/2017