



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 39 OF 2010 (MURDER)

REPUBLIC.....PROSECUTION

VERSUS

PETER KARANJA.....ACCUSED/APPLICANT

R U L I N G

1. This is a ruling on an application dated 26/10/2013 seeking for orders that the applicant be released on bail/bond pending the hearing and determination of this case.
2. The application is supported by the affidavit of the applicant in which he states that he is a casual labourer and the bread winner of the family. His children are in school and solely depend on him and that if he is released on bond, his life will not be in danger.
3. The application was opposed by the respondent relying on the affidavit of Cpl. Fredrick Ochido of Directorate of Criminal Investigations, Embu. He deposes that he is the investigating officer in this case and therefore competent to swear the affidavit. He states that at the time the offence was committed, the applicant misused his firearm by killing ten (10) people two of whom were his colleagues.
4. Cpl. Ochido gives several reasons why the applicant should not be released on bond. Firstly that he is facing ten counts of murder and if convicted he will be sentenced to death. Due to the severity of the offence, the applicant is likely to abscond in the event that he is released on bail. Some of the witnesses have already adduced incriminating evidence against the applicant thereby strengthening the likelihood to abscond.
5. It is also stated that the safety of the applicant is in danger since the families of the deceased are still bitter and may be tempted to revenge. It is also contended that the applicant is likely to interfere with witnesses if released on bail and especially one Florence Wanja Njue alias "Marigu" who was the applicant's lover.
6. The relevant law regarding bail is contained in Article 49(1)(h) of the Constitution which provides:-

An arrested person has the right to be released on bail, on reasonable conditions pending a charge or a trial, unless there are compelling reasons not to be released.
7. One of the reasons given for not granting bail is that of the security and safety of the applicant. It is the responsibility of the State to provide the security and protection of its own citizens. This is not a function of the prosecution and any member of the public taking the law in their hands should face the full force of the law. I find that the safety of the applicant is not a compelling reason to deny bail.
8. It was also argued that the applicant being an administration police officer misused his firearm by killing ten people. Bail is a constitutional right of an accused person and may only be limited by the ability of the prosecution giving compelling reasons. The seriousness of the offence is not a sufficient reason to deny bail.
9. However, the court takes into consideration the fact that the applicant brought to an end the lives of ten people and that the prosecution has already expressed the fear that the accused is likely to interfere with the witnesses. Fifteen (15) witnesses have already testified and a similar number are yet to testify. The case was registered in the year of 2010 and has a history of witnesses not attending court. The witness mentioned as the lover of the accused is a key witness in this case and ought to have testified as one of the first witnesses. The prosecutions are still making effort to avail the witness. In the event that the applicant is released on bond, it is highly probable that the said witness may be interfered with.
10. Compelling reasons may be defined as "forceful" or "powerful". With the above information in mind, the issue which arises is whether the reasons given by the prosecutions are compellable.

11. The prosecution state that due to the multiplicity of the murder charges facing the applicant, he is likely to abscond if released on bail. In his affidavit the applicant did not give any details of his residence. It is not known where he lives or who may be contacted in case he absconds. The fact that he is facing ten counts of murder is a compelling reason not to release him. I agree with the respondent that chances are high that he may abscond. It would be a slap in the face of the victims' families if the applicant is granted bond only to vanish before the trial is concluded.

12. It is also my considered view that the interference of witnesses is real in that one witness Florence Wanja Njue has not co-operated with the respondent. It would be to the disadvantage of the respondent's case should other witnesses fail to come to court for similar reasons. The court has a duty of delivering justice to both the accused and the victims' families. It is important that all measures be taken to prevent a trial becoming a white elephant.

13. It is my finding that the application is not merited and it is hereby dismissed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF MAY, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Mwanza for the State

Mr. Andande for Accused