

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 95 OF 2015

SAMWEL KARIUKI KANDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Samwel Kariuki Kande** is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 8th day of September 2015 at Backyard Bar along Eastern Bypass within Ruiru sub-county in Kiambu County, murdered **Moses Macua Kamande**.
2. The accused now wishes to be released on bail pending trial. He filed a notice of motion to that effect on 2nd November 2015. In the supporting affidavit, he denies that he committed the offence and states that he shall not interfere with witnesses and shall be ready to attend trial.
3. By the date of hearing on 30th November 2015, the Director Public Prosecutions had not filed any response to the application. Prosecution counsel however told the court that they would respond orally. In urging the application, **Ms. Oburu** for the applicant submitted that the offence of murder was now bailable. She reiterated the averments in the applicant's affidavit and underscored the undertaking by the applicant to attend trial.
4. In response **Mr. Okeyo** stated that the Director Public Prosecutions had been served with the application and that upon receipt he consulted with the investigating officer in the case. He submitted that based on the consultation and on his review of the circumstances under which the offence was committed, he was of the view that there were no compelling reasons to deny the applicant bail. He only prayed for conditional terms.
5. In considering this application, I am guided by **Article 49 (i)(h) of the Constitution** which provides that a suspect shall be released on bail unless there are compelling reasons. It is also the duty of the state to bring before the court any compelling reasons. See **Republic Vs. Danson Mgunya & another [2010] eKLR**. Further it is settled that the determination whether or not to grant bail is at the discretion of the court. Even where the prosecution does not demonstrate the existence of compelling reasons the court must satisfy itself that there exist no compelling reasons by examining all the facts presented before it and the circumstances of the case. See **Republic V. Ezekial Momanyi Onsongo & 2 others, Nairobi Criminal Case No. 67 of 2015**.
6. Applying the law and the principles set out above to the present case, I have come to the considered view that there are no compelling reasons to deny the applicant bail.
7. I allow the application on the following conditions:-
 - i. That the accused shall execute a personal bond of Kshs.500,000 and provide one surety of similar amount.
 - (ii) That he shall attend court whenever required until the conclusion of his trial.
 - (iii) That he shall in no way interfere with prosecution witnesses and any reported interference shall lead to the cancellation of this bond.

Orders accordingly.

Ruling delivered and signed at Nairobi this 4th day of February, 2016

R.LAGAT-KORIR

JUDGE

In the presence of the accused and the prosecution counsel