



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MURDER CASE NO. 2 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN CHOMBA KAMAU.....ACCUSED

RULING

1. **STEPHEN CHOMBA KAMAU**, the applicant herein is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on 1st January, 2014 at Karaari village within Kirinyaga County he unlawfully murdered one **SIMON MACHARIA KAMAU**.
2. The applicant has moved this court through a Notice of Motion dated 27th November, 2014 for bond/bail pending trial on the basis that he has a constitutional right to bail or bond. He contends that there are no compelling reasons to deny him his right under **Article 49 (h)** of the **Constitution**. In support of his application, he has sworn an affidavit sworn on 27th November, 2014 and deposed that there are no compelling reasons to deny him bond.
3. At the hearing of this application, learned counsel Gacheche wa Miano for the applicant faulted the Respondent for basing their opposition to the application on hearsay saying that no one had come forward to say that the Applicant had threatened him or her. In his contention the allegations of threats were mere speculations and the same could not constitute compelling reasons.
4. The state through **Mr. Sitati** learned counsel representing the Office of Director of Public Prosecutions opposed the application and relied on the replying affidavit of the investigating officer, P.C. JOSEPH MUIA sworn on 26th February, 2015. In the affidavit the investigating officer has deposed that the accused is charged with the murder of his brother and that the key witnesses who are family members have expressed fears about the applicant because of the threats that he allegedly issued. Mr. Sitati submitted that if the applicant is released on bond, his key witnesses in the case will be intimidated to testify in the case and this may compromise their case against the accused. He also relied on the probation report which supported the sentiments expressed by the investigating officer.
5. I have considered the application and submissions by both counsels. A right to bail/bond for an accused person is imbedded in our **Constitution** under **Article 49 (h)** and **Article 50 (2) (a)**. The accused herein has a right to be presumed innocent until the contrary is proved and that is why the Constitution requires that an accused person has a right to be granted bond/bail unless compelling reasons are advanced by the prosecution.
6. The State has stated that the Applicant is viewed as a danger to his family and the community because

of his past conduct of issuing threats. This Court ordered for a social inquiry to be conducted on the accused person and according to the report filed in this case, the accused person is viewed negatively by the members of his family and the local community. In considering whether to grant bail in cases such as this the established principles are the following:-

(i) Whether the accused person is likely to turn up for trial if granted bond/bail.

(ii) Whether the accused is likely to interfere with witnesses.

(iii) Nature of the offence and severity of the sentence.

7. Applying the above principles to this present case indicates that circumstances of this case mitigates against the application for bond. The probation report shows that his own wife and children left him and has no place to call home and is therefore considered a flight risk. His attendance to court if released on bond is therefore not assured. I have also considered the fact that he is viewed as a dangerous person and he is likely to intimidate or interfere with witnesses and this in my view could lead to miscarriage of justice. The report has also indicated that the community is quite hostile to him and given the fact that the case involves close family members this Court finds that there are compelling reasons to deny bail to the accused.

In the premises I find no merit in the application dated 27th November, 2014 at this stage. The same is disallowed.

Dated and delivered at Kerugoya this 19th day of July, 2016.

R. K. LIMO

JUDGE

19.7.2016

Before Hon. Justice R. Limo J.,

State Counsel Omayo

Court Assistant Willy Mwangi

Accused present

Interpretation: English-Kikuyu

Miano for accused present

Omayo for State present

COURT: Ruling dated, signed and delivered in the open court in presence of Miano advocate for accused and Omayo for State.

R. K. LIMO

JUDGE

19.7.2016