

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 12 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

VINCENT ADURO JIBENDI.....ACCUSED

RULING

Vincent Aduro Jibendi, the accused, 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 4th day of February 2016 at Kawangware Kabiru in Dagoretti Sub-County within Nairobi County murdered Brian Makisu. The accused has pleaded not guilty to the charge.

Pending the hearing and determination of this case, the accused has moved this court by way of Notice of Motion dated 30th May 2016 seeking to be admitted to bail. The grounds in support of the application are found on the face of the application, the supporting affidavit sworn by Mr. Kennedy Otieno Arum, counsel for the accused, and oral submissions made in court.

The accused states that bail is a constitutional right available to him; that he is not a flight risk and will attend all court sessions until this case is determined; that he is a Kenyan citizen who resides in Kawangware Nairobi; that he has a family and that both parents are surviving and that he is a man of meager means.

Mr. Arum submitted that the prosecution has not advanced any compelling reasons to deny the accused bail/bond and that the allegations that he may interfere with witnesses or that he may be in danger of attack if released on bail have not been substantiated.

The application is opposed by the prosecution. Prosecution counsel submitted that the offence was committed in Kawangware where most of the witnesses reside; that witnesses knew both the accused and the deceased and that he may influence or interfere with the witnesses; that the accused was attacked by hostile mob and that the atmosphere on the ground is still charged and his security may be compromised and that the accused has not specifically pointed out his place of abode and given that the offence is a serious one he may abscond. Counsel asked the court to exercise its discretion judicially and decline the application.

In reply counsel for the accused stated that the investigating officer knows where the accused lives in Kawangware and that there is no evidence of interference or likelihood of interference.

I have considered the application and the grounds advanced in opposing it. Bail is a right that is available to all accused persons. It is however not absolute and can be denied where compelling reasons exist. The prosecution has stated that the accused may abscond given the seriousness of the offence and the fact that he has not provided details of his place of abode; that he may interfere with witnesses who are his relatives and neighbours and that he may be in danger of attack by the public. These are statements that are not supported by evidence and I find that they do not compel this court to find in prosecution's favour. The statements from witnesses have been recorded and investigations in this case are complete. I am not convinced that the prosecution has advanced compelling reasons to persuade me to decline this application. I am therefore inclined to grant this application which I hereby do.

However, before making my final orders in this matter as regards terms and conditions of bail, I will and do hereby refer this matter to Probation for purposes of getting a report on the accused. It is my view that this report will be useful to this court to inform the final decision on what terms and conditions of bail to set. This matter will be mentioned in two weeks' time within which time the report will have been filed. It is so ordered.

Dated, signed and delivered this 6th day of July 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Okeyo for the prosecution

Mr. Arum for the accused

Mr. Vincent Aduro Jibendi, the accused

Mr. Daniel Ngumbi, court clerk