



REPUBLIC OF KENYA
IN THE HIGH COURT
AT MACHAKOS
CRIMINAL CASE NO. 29 OF 2015
WYCLIFFE AMIDA alias VINNIEY.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

The Applicant is the 1st Accused Person herein and he was charged with murder jointly with two other accused persons contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on 14th March 2015 at Susana area, Katoloni sub-location in Machakos County, jointly with others not before the Court murdered Hilda Wanjiru Joseph. The Applicant pleaded not guilty to the offence. The Applicant subsequently filed an application by way of a Notice of Motion filed in Court on 21st January 2016 seeking to be admitted to bond/bail pending trial.

The Applicant urged his grounds for the application in the said Notice of Motion, and in a supporting affidavit he swore on 21st January 2016. The grounds are that he lives in Nairobi and has a permanent place of abode and is therefore not a flight risk, and is not likely to interfere with the witnesses in the case. The Applicant also averred that he is a law abiding citizen, and undertook to abide with the terms and conditions set by the Court.

The learned counsel for the Applicant, Francis Mutua Advocate filed written submissions on the application on 15th February 2016, wherein reliance was placed on Articles 49(1)(h) and 50 (2)(a) of the Constitution for the right to bail/bond and the right to be presumed innocent until the contrary is proved. Reliance was also placed in this regard on the decisions in **R vs John Kahindi Karisa & 2 Others, (2010) e KLR** and **R. vs Dwight Sagaray & 4 Others, (2013) e KLR**.

The Prosecution opposed the Applicant's application in a replying affidavit sworn on 3rd March 2016 by CPL Peter Wafula, the investigating officer in this criminal case. The deponent stated that the Applicant has no known place of abode, and that the prosecution has sufficient evidence that places the Applicant at the scene of the crime and that shows that he is a dangerous sharpshooter and executioner.

Further, that the Applicant's accomplices who were dangerously armed are still at large and the murder weapon has not been recovered, and key witnesses who were injured during the commission of the crime may thus be targeted and/or interfered with. It was thus alleged that the Applicant may have an incentive to abscond once released on bail, considering the severity of the sentence provided by law for the offence of murder, which is the death penalty. The learned Prosecution counsel, Ms.Mogoi Lillian, relied on the said replying affidavit.

I have considered the pleadings and arguments made by the Applicant and Prosecution. I also requested the Probation Service to prepare and file a pre-bail report on the Applicant, which report were filed in Court on 31st August 2016, and notes that he has a fixed place of abode and has no known bad record. The report also notes that the deceased husband is apprehensive that the Applicant might interfere with him as he knows where he lives. The report also indicates that the Applicant does not know the relatives of the deceased and has no intention of interfering with witnesses.

The applicable law on bail/bond pending trial is Article 49 (1) (h) of the Constitution, which permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. The issue in this application therefore is whether there are compelling reasons why the Applicant should not be released on bail and if so, what are those compelling reasons and who carries the burden of satisfying the court with regard to the existence of such reasons.

In **Republic –vs- Danson Ngunya & Another [2010] e KLR**, Makhandia J, (as he then was) stated that if the state wants the accused deprived of his right to be released on bond, then the State must satisfy the court that it would not be in the interest of justice to make an order granting bail/bond.

I am of the opinion after perusing the probation report availed to the Court that the arguments presented by the Prosecution have no supporting evidence. The prosecution in addition did not provide any evidence of the alleged expertise of the Applicant as a sharpshooter and executioner or of the witnesses that are likely to be interfered with. The physical and other proximity between the Applicant and the deceased's husband who expressed apprehension that the accused might interfere with him, has also not been established.

I therefore find that no compelling reason has been shown to deny the Applicant bail.

The Applicant's Notice of Motion dated 21st January 2016 is accordingly allowed. I admit the Applicant to bail/bond pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/=, and shall provide one surety of similar sum.
2. The surety for the Applicant will be approved by the Deputy Registrar of this court.
3. The Applicant shall attend mentions before the Deputy Registrar of the High Court, Machakos once every month until the case is heard and determined.
4. The Applicant shall not have any contact with, or in any other manner interfere with the prosecution witnesses in this case.
5. The Applicant shall be required to attend court for the remainder of the trial without fail.
6. In default of orders 1, 2, 3, and 4 hereinabove, the Applicant's bond shall be cancelled immediately and his surety called to account.

It is so ordered.

DATED AT MACHAKOS THIS 1ST SEPTEMBER 2016.

P. NYAMWEYA

JUDGE