

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO.85 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

PETER MWANGI GACHUIRI.....ACCUSED

RULING

The Accused, Peter Mwangi Gachuiiri was charged with **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that on 24th August 2014 at Mlango Kubwa area, Kamukunji in Nairobi County, the Accused murdered Victor Amwayi Kulavi. When the Accused was arraigned before this court, he pleaded not guilty to the charge. The trial is yet to commence. Pending trial, the Accused has applied to be released on bail. The Accused states that he suffers from a heart condition that requires constant monitoring and medication that is not available in remand custody. He further states that he is a first year student at Mount Kenya University. He pleads with the court to release him on bail pending trial to enable him continue with his studies. He undertook to abide by any terms that the court may impose to secure his release on bail pending trial. He reiterated that he had a constitutional right to be released on bail pending trial unless there were compelling reasons. He was not a flight risk. He would not interfere with prosecution witnesses. He urged the court to favourably consider his application for bail. The application is supported by the annexed affidavit of the Accused.

The application is opposed. The prosecution relied on a replying affidavit sworn by the investigating officer. The prosecution argued that the Accused was a flight risk. This was evident from the fact that he disappeared from the scene of crime for several days before he surrendered himself to the police. The prosecution was apprehensive that the Accused may likely interfere with prosecution witnesses because some of the prosecution witnesses were his friends. The prosecution submitted that the grant of bail, though constitutionally provided, was not absolute. In the present case, there were compelling reasons to deny the Accused bail pending trial.

This court has carefully considered the rival submission made by the parties to this application. The issue for determination by this court is whether the Accused made a case for this court to release him on bail pending trial. That the Accused is entitled to be considered for bail pending trial as provided under **Article 49(1)(h)** of the **Constitution** is without doubt. However, the court must be satisfied that there exist no compelling reasons to deny him bail. Among the compelling reasons to be considered by the court include: the nature of the offence, the strength of the evidence which supports the charge, the gravity of the punishment in the event of conviction, the previous criminal record of the applicant, the probability the accused may present or surrender himself for trial, the likelihood of further charges being brought against the accused, the likelihood of the accused interfering with witnesses or to procure the suppression of evidence that may incriminate him, the probability of finding the accused guilty as charged, the detention for protection of the accused and the necessity to procure medical or social report pending final disposal of the case (see **Republic –vs- Milton Kabulit & Others Criminal Case No.115 of 2008 (Nakuru)** – unreported). The above reasons are not by any means exhaustive. The court hearing

the case will have to determine each case based on its merits and circumstances.

Having evaluated the facts of this case, it was clear to this court that there were no compelling reasons to deny the Accused bail pending trial. The prosecution asserted that the Accused was a flight risk. This assessment was on the basis of what transpired when the offence is alleged to have been committed. It was common ground that the Accused disappeared from the scene of crime for a few days before he surrendered himself to the police. It was upon his surrender that he was arrested and charged with the present offence. In this court's considered opinion, the fact that the Accused surrendered himself to the police is clear proof that he is not a flight risk. This court has further seen the medical report annexed to the affidavit in support of the application. The Accused suffers from rheumatic heart disease. He is on medication. His condition requires constant monitoring and evaluation. He is also a student. His parents are willing to stand surety for him. All these factors have persuaded this court that the Accused's application to be released on bail pending trial is merited and should be allowed.

In the premises therefore, the Accused is ordered released on bail pending trial on condition that he posts bail of Kshs.1 million with two sureties of the same amount. One of the sureties shall be one his parents. The Accused shall be required to attend court during the hearing of the case without fail. He shall not get into contact with any of the prosecution witnesses. He shall appear before the Deputy Registrar of this court once every month for mention of his case until the hearing and determination of the case or until further orders of the court. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2015

L. KIMARU

JUDGE