

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.59 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

SALIM OMONDI ODERA.....ACCUSED

RULING

The Accused, Salim Omondi Odera 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 the night of 2nd and 3rd March 2014 at University of Nairobi Kikuyu Campus, the Accused murdered James Mugane Muturi. When the Accused was arraigned before this court, he pleaded not guilty to the charge. The trial is yet to commence. The Accused has made an application to be released on bond pending trial pursuant to **Article 49(1)(h)** of the **Constitution**. The Accused states that the right to be released on bail pending trial is constitutionally guaranteed unless there are compelling reasons. In his view, there were no compelling reasons for the court to deny him bail pending trial. He reiterated that he was innocent until the trial court establishes his guilt or otherwise. He undertook to avail himself to court whenever he will be required until the conclusion of the case. He promised not interfere with the prosecution witnesses. He stated that he was not a flight risk. The application is supported by the annexed affidavit of the Accused.

The application is opposed. Corporal Evans Omanga Mose, the investigating officer, swore a replying affidavit in opposition to the application. He stated that whereas the Accused has a constitutional right to be released on bail pending trial, there were compelling reasons why the court should decline to do so. He swore that after the accused had allegedly committed the offence, he went into hiding for a period of four (4) months and was only arrested when he sneaked back to the college to register for the exams. He was of the view that the Accused was a flight risk if he is released on bail pending trial. He further deponed that the Accused was likely to interfere with the prosecution witnesses taking into account that the majority of the civilian witnesses are his fellow students. He further stated that the Accused may be a danger to himself if he is released on bail because there was likelihood that other students would harm him. In the premises therefore, he urged the court to remand the Accused in custody pending the hearing and determination of the case.

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.

In the present application, it is the prosecution's case that there are compelling reasons to deny the Accused bail pending trial. The prosecution states that after the Accused had allegedly committed the offence, he went into hiding for a period of four (4) months. He only resurfaced when he sought to register for the examination. The prosecution was apprehensive that the Accused would likely interfere with the prosecution witnesses taking into account that most of the civilian witnesses are fellow students. On the other hand, it is the Accused's assertion that no compelling reasons that cannot be addressed by this court issuing appropriate conditions for granting bail has been established by the prosecution. He urged the court to uphold his constitutional right to be released on bail pending trial. This court has carefully evaluated the facts of this case. The fact that the Accused fled from the scene after allegedly committing the offence is a compelling reason for this court to deny him bail pending trial. This court agrees with the prosecution that from the Accused's past behaviour, it was likely that the Accused would be a flight risk if he is released on bail pending trial. That reason alone is sufficient for this court to order that the Accused remains in custody pending the hearing and determination of the criminal case facing him.

In the premises therefore, the application by the Accused to be released on bail pending trial is hereby declined. The Accused shall remain in custody pending the hearing and determination of the case. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2015

L. KIMARU

JUDGE