



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO.17 OF 2015**  
**CARL GARY SINGLEMAN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The accused Carl Gary Singleton 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 the 19<sup>th</sup> day of November 2014 at Neptune Shelder Estate within Gachie Area in Nairobi County murdered

**Peris Ashley Agumbi.**

He pleaded not guilty to the charge on **5<sup>th</sup> February 2015** and was remanded in custody pending his trial which is set to commence on 4<sup>th</sup> and 5<sup>th</sup> November, 2015. He has now applied to be released on bail pending trial.

The application filed on 18<sup>th</sup> February 2015 is brought under Articles 19,20,21, 22, 29 49 1(h) and 50 2(a) of the Constitution. In his supporting affidavit the accused/applicant deposes *inter alia* that he has all along co-operated with the police; that under the Kenyan Constitution he is presumed innocent until proven guilty; that he is not a flight risk having surrendered his passport to the police; that he has a fixed abode in Kenya; that he shall not interfere with prosecution witnesses; and, that there were no compelling reasons to deny him bail.

In submissions filed on 17<sup>th</sup> March 2015, learned defence counsel **Mr. Okulo** outlined the applicable law. He underscored Article 49 (i)(h) on the right of an arrested person to be released on bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released; Article 52(a) on the right of every accused person to a fair trial which includes the right to be presumed innocent until the contrary is proven; and the bill of rights under Chapter 4 of the Constitution. Counsel also cited various authorities including **Republic Vs. Danson Mgunya & another 2010 eKLR** and **Watoro –Vs- Republic, 1991 KLR 220** which emphasize the principle that the primary consideration in bail application is whether the accused person shall attend court and be available at trial.

In further submissions, learned counsel sought to demonstrate that the applicant was not a flight risk as the police were still in possession of his passport. He urged that there was no evidence from the prosecution regarding the accused's character and antecedents which would justify the refusal of his application for bail. On the suggestion by the prosecution that the accused was likely to interfere with witnesses, counsel submitted that the accused person has not at any one time interfered with prosecution witnesses and there was no likelihood that he would so interfere if released on bail.

The state has opposed the application vide the Replying affidavit of **No. 63451 IP Maurice Chemesis** who is the investigating officer in the matter. In the lengthy affidavit IP Chemesis deposes that on the night of 19<sup>th</sup> November 2014 the deceased made a report to the police that she had been assaulted by the accused who had also thrown away her diabetic medicine by flushing it in the toilet. That on 20<sup>th</sup> November 2014 police officers attempted to arrest the accused but he locked himself in his house until the 23<sup>rd</sup> November 2014; that the accused had an expired visa; and that the accused was scheduled to leave the county on 5<sup>th</sup> February 2015 with the knowledge that he was being investigated for the murder of the deceased.

Finally, IP Chemesis deposed that the accused person knows the prosecution witnesses and there was a possibility that he would inflict real fear in them if released and that although the offence of murder is now bailable, the grant of bail is not absolute but a matter of discretion on the part of the court.

At the hearing of the application on 18<sup>th</sup> March 2015 Mr. Okulo for the applicant highlighted his written submissions referred to above. He added that the accused had been arrested on 21<sup>st</sup> November 2014 but was released pending an inquest and that the said inquest did not take place but instead the accused was arrested and charged when he presented himself to the police. He disputed that the accused was a flight risk as he had had an opportunity to leave the country earlier at the expiry of his visa but did not.

In reply, learned prosecution counsel **Ms. Mwaniki** for the Republic drew the court's attention to the averments in paragraphs 3-7 of the replying affidavit sworn by IP Chemesis which demonstrate that the accused locked himself in the house to avoid being questioned on the death of the deceased. That in the course of the investigations, the accused confirmed his ticket to fly out of the country and would have escaped if police officers had not laid an ambush to arrest him. She submitted that such conduct shows that the accused was a flight risk.

The Constitutional basis of the application is not contested. Any arrested person whether Kenyan citizen or foreign national enjoys protection and has a right to be released on bail unless there are compelling reasons not to be released. As stated by Ibrahim J.(as he then was) in **Republic Vs.Danson Mgunya** cited above, where the State opposes bail, it bears the duty of demonstrating to the court the compelling reasons why an accused should not be granted bail. In this case the Republic in opposing bail has laid before court two reasons. The first is that the applicant may leave the jurisdiction of the court and therefore evade trial. The second is that the applicant may interfere with or intimidate witnesses.

I will first address the issue of interference. IP Chemesis deposes at paragraph 10 of the Replying Affidavit that the accused has been served with witness statements and that he will inflict fear on them. It is by law the right of an accused person to be informed in every detail of the case against him and for the prosecution to disclose the evidence it seeks to rely on in the trial. It was therefore in order for the prosecution to supply the witness statements to the accused. However, whereas the statements may bear the identities of the witnesses, it has not been demonstrated to the court whether any of the witnesses was a vulnerable witness who could easily be intimidated or if any enjoyed a special relationship with the accused which would make it possible for the accused to influence and/or interfere with their testimony. I am not persuaded that the applicant would interfere with and/or influence witnesses. I dismiss this ground as a mere speculation on the part of the prosecution.

The other reason advanced by the State is the likelihood of the accused becoming a flight risk if released. IP Chemesis has set out in the Replying Affidavit that after the alleged offence the accused locked himself in his house and was only arrested after the police laid an ambush. That the accused was scheduled to leave the country on 5<sup>th</sup> February 2015 when the investigations were going on. In support of this, the investigating officer displayed the accused's ticket which shows that his flight scheduled to depart Nairobi on 5<sup>th</sup> February 2015 was confirmed. This point was also extensively canvassed by the prosecution counsel who in her submissions told the court that the accused would have escaped if police officers had not laid an ambush to arrest him.

In considering this issue, I note that the Republic has not told the court where and how the accused was

arrested. However, the facts set out demonstrating that the accused initially tried to evade investigation and arrest and later confirmed his ticket to leave the country on 5<sup>th</sup> February 2015 creates doubt in the mind of the court that the accused if released was likely to leave this court's jurisdiction and not turn up for his trial. In **Watoro Vs. Republic (1991) KLR 220** which has been cited to me by the defence, the paramount consideration in bail application is whether the accused will turn up for his trial.

I am satisfied that the prosecution has demonstrated to the satisfaction of the court that the accused, by his antecedents was a flight risk and may evade trial if released. I find this a compelling reason within the contemplation of Article 49 (i) h of the Constitution.

I am persuaded considering the circumstances of this case, that the interests of justice would be served in disallowing the application.

For the foregoing reasons, I dismiss the application and order that the accused remain in custody pending trial.

**Ruling delivered and dated at Nairobi this 11<sup>th</sup> day of May, 2015**

**R. LAGAT - KORIR**

**JUDGE**

**In the presence of:**

.....: Court clerk

.....: Accused/Applicant

.....: Counsel for Accused/Applicant

.....: Counsel for the respondent