



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.83 OF 2015**

**ISMAEL HUSSEIN IBRAHIM.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The accused Ismael Hussein Ibrahim is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the night of 20<sup>th</sup> and 21<sup>st</sup> day of August 2015 at unknown time at Destiny Bar Elpaso Ngong in Kajiado North Sub-county within Kajiado murdered **BENSON BARAZA**. The accused took plea on 7<sup>th</sup> September 2013 and denied the charge. On the same day, he filed an application to be released on bail pending trial.
2. The application is premised on the following grounds;-
  - i. *That the applicant has a constitutional right to be released on bond or bail on reasonable conditions pending trial.*
  - ii. *That there are no compelling reasons for the applicant not being released on bond or bail pending trial.*
  - iii. *That the applicant herein has been in custody from the 22<sup>nd</sup> August 2015 and has not interfered with the investigations, or in any manner influenced or intimidated witnesses and the applicant will not so interfere if released on bail or bond.*
  - iv. *That the applicant has a fixed place of abode and strong family ties and he is not a flight risk and has cooperated with the investigating officer while at the Ngong Police Station.*
  - v. *That the applicant is presumed innocent until the contrary is proved and the applicant has the constitutional right to equal protection and equal benefit of the law.*
3. The accused has made several averments in the supporting affidavit. He deposes that he has a fixed abode at Ngong AP Camp and in the county of Wajir where he comes from and is well known by the local administration; that he is a police officer and his movements can be monitored easily; that he has not in any way influenced the investigation or witnesses and undertakes not to meet or in any way influence prosecution witnesses if released on bail; that he is willing to abide by any conditions that the court may set and attend all court sessions as may be required of him; and, that he has family members who are willing to stand surety for him and ensure that he attends court.
4. At the hearing of the application on 29<sup>th</sup> September 2015, **Mr. Njoroge** for the accused elaborated on the grounds in the application and the averments of the applicant in the supporting affidavit. He asked the court to consider the personal circumstances of the accused and grant him reasonable bond.

5. **Ms. Onunga** for the state informed the court that the State had not filed a replying affidavit for reason that the bail application was not opposed. She submitted that she had contacted the investigating officer in the case who confirmed to her that there was no compelling reason why the accused should not be granted bail. She only sought that the court attaches stringent terms to ensure that the applicant attends trial.
6. I have considered the application. Under Article 49(i) (h) of the Constitution, it is the right of an accused person to be released on bail pending trial unless there are compelling reasons. It is also the duty of the State to demonstrate to the court compelling reasons why an accused should not be granted bail. See **Republic Vs. Danson Mgunya & another 2010 eKLR**. In all cases, however, the court retains discretion considering each case on its merits to grant or deny bail.
7. In the present case, the state has categorically submitted that the applicant may be released on bail. The applicant has also deposed that he shall attend court whenever required. Considering that the primary consideration for bail is to secure the accused's attendance at trial; and, further that no compelling reason has been advanced, the court sees no reason why the accused should be denied bail.
8. In the premises, I allow the application and order the release of the accused on the following conditions:-
  - i. He shall execute a bond of One Million Shillings (Kshs.1,000,000/-) with two sureties of One Million Shillings (Kshs.1,000,000/-) each.
  - ii. He shall not communicate with or in any manner whatsoever interfere with prosecution witnesses. Any such interference shall lead to automatic cancellation of the bond.
  - iii. He shall attend monthly mentions before the Deputy Registrar of the court until the commencement of the trial.

Orders accordingly.

**Ruling delivered and dated at Nairobi this 8th day of October, 2015**

**R.LAGAT-KORIR**

**JUDGE**

**In the presence of:**

.....:Applicant

..... Court clerk

.....: For the Applicant

.....: For State