



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.16 OF 2015

KENNEDY OCHIENG MIRUKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

**Kennedy Ochieng Miruka** 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 16<sup>th</sup> January 2015 at Kiambiu Slums within Nairobi County murdered Julius Otieno. The accused has now applied to be released on bail pending trial. His application is grounded on various Articles of the Constitution chief among them being the right to liberty and the presumption of innocence.

The application is supported by a lengthy affidavit sworn by the accused. In summary, he has deposed that the deceased was his paternal Uncle and that although he had an opportunity to run away after the incident, he did not do so; that he shall not interfere with prosecution witnesses; that he is a dedicated Christian and therefore not a threat to any person or witnesses; and that he shall abide by any conditions set by the court.

At the hearing of the application on 6<sup>th</sup> October 2015 **Mr. Olando**, the applicant's counsel submitted that the applicant was not a flight risk and would attend court whenever required. He underscored that the primary purpose of bail was to secure the accused's attendance at trial. He further submitted that the deceased was a cousin to the accused and there was no longer any hostility in the extended family. **Mr. Okeyo** for the State submitted that the state was not opposed to the applicant being granted bail on conditions. Further, he submitted that the state was amenable to plea negotiation. In response **Mr. Olando** for the accused submitted that he would be consulting the accused on the suggested plea negotiations.

In considering this application, I am guided by Article 49(i) h of the Constitution which grants the accused the right to bail unless there are compelling reasons. I am also guided by the criteria that courts have time and again used in considering whether or not to grant bail. These include but are not limited to the likelihood of the accused not attending trial, the likelihood of the accused interfering with witnesses and the safety of the accused. See **Republic Vs. Danson Mgunya & another 2010 eKLR**. In all cases however, the court retains the discretion to grant or deny bail. Each case is considered on its own merit and circumstances.

In the present application, it is common ground that the applicant and the deceased were close relatives. It is common ground also that the parties are keen to pursue plea negotiations. Against that background and in the circumstances of this case, I find that the interests of justice militate against the grant of bail at this stage.

I dismiss the application and order that the parties report to the court the outcome of their intended plea negotiation to facilitate the expeditious disposal of the matter.

Orders accordingly.

**Ruling delivered, dated and signed at Nairobi this 15th day of October, 2015**

**R. LAGAT - KORIR**

**JUDGE**

**In the presence of:**

.....: Court clerk

.....: Accused

.....: For State

.....: For Accused