



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL CASE NO. 47 OF 2015**

**LESIT, J.**

**REPUBLIC ..... PROSECUTION**

**VERSUS**

**JOHN OKETCH ..... ACCUSED**

**RULING**

1. The accused **JOHN OKETCH** is charged with murder contrary to **Section 203** of the **Penal Code**.
2. He has filed a Notice of Motion application dated 11<sup>th</sup> June 2015 in which he seeks to be granted bail with sureties or cash bail paid pending the hearing and determination of this case.
3. The application is premised on four grounds namely:
  - i. That the Applicant was charged with the offence of murder an offence he denied during the plea taken on 20<sup>th</sup> May 2015.
  - ii. That the offence of murder is bailable under **Article 49(1) (h)** of the **Constitution**.
  - iii. That the accused has a right to be regarded as innocent until proven guilty.
  - iv. That it is in the interests of justice that this application be allowed.
4. The application is premised further on an affidavit sworn by the accused. In that affidavit the accused shows that he is married with one child and that he worked in construction sites in Gachie before his arrest.
5. The accused deposes that he has a fixed abode in Gachie, Kiambu County and also in Budalangi, in Busia County where his family also lives.
6. The State has opposed the application through a replying affidavit shown by P.C. Felix Kibet, the investigating officer of this case dated 14<sup>th</sup> July 2015. In that affidavit the deponent avers that the accused is a flight risk and that the specific place in Gachie he claims to have an abode has not been disclosed and neither was his home village in Budalangi.
7. The officer avers that the accused knows the witnesses and was likely to interfere with them.
8. I have considered the application before me. Mr. Mutitu for the accused submitted that the accused would provide adequate securities if granted bond and would therefore not be a flight risk.
9. Ms Maari for the State on her part submitted that the State was opposing bail because the accused is a flight risk on grounds he had not indicated specifically where he lives or comes from nor attached any document to prove it.
10. I called for a Probation Report on a social inquiry about the accused. The Report was filed on 29<sup>th</sup>

- September 2015. Unfortunately the family of the deceased declined to be interviewed and so we have nothing to go by to know how the family feels about the possibility of the accused being released on bond.
11. The Probation Officer's assessment of the accused was that apart from admitting that he had ever smoked bhang and engaged in alcohol abuse at some point in his life, he was otherwise not a threat to the people or property and was well known and could be easily traced.
  12. The accused arraigned in court on 15<sup>th</sup> May 2015. He had been in custody for relatively a very short time.
  13. Bail is a constitutional right to persons facing any criminal offence however penal. **Article 49(1)(h)** gives only one condition why bail/bond should be declined, that is if there are compelling reasons to decline bail.
  14. The compelling reasons are not described anywhere. However what may constitute compelling reasons has been the subject of consideration in many cases.
  15. Bail may be declined if it is shown accused may fail to turn out for his trial; or he may interfere with witnesses; or is a threat to witnesses or society generally or for any other cause shown which may interfere with the trial generally.
  16. The State has not demonstrated any ground upon which bond may be declined. The accused and family of deceased are well known to each other ruling out any possibility of accused hiding or accused interfering with the trial. I see no reason not to grant accused bail.

## **ORDER**

The accused is admitted to bail on the following terms:

1. **That he may be released on payment of a cash bail in the sum of KShs.100,000/=.**
2. **In the alternative the accused may be released on a bond of KShs.250,000/= with one surety of the same amount.**
3. **The accused should not interfere with any of the witnesses during the period pending the hearing of the prosecution case.**

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF OCTOBER, 2015.**

**LESIIT, J.**

**JUDGE.**