

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 92 OF 2013

SIMON MANGO OTIENO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application for bail by the accused has been contested by the prosecution on several grounds. **Cpl. Abdi Jibril** of CID Central, who is the Investigating Officer in the case has sworn a replying affidavit stating that the accused was seen together with others, committing the offence in broad daylight along Central Business District. He further deposes that there was sufficient evidence to charge and convict the accused and that the accused was likely to abscond given the severity of the sentence upon conviction.

At the hearing of the application, **Ms Gichubi** for the State while referring to paragraph 6 of the Replying Affidavit submitted that the accused was seen assaulting the deceased with concrete blocks until he died on the scene. In view of this, she argued it would be a great injustice to release the applicant back to the community.

Mr. Kaingu for the accused submitted that the accused was innocent until proven guilty and that he was entitled to bail under Article 49 (i) h of the Constitution. He further submitted that there was nothing either in the Replying Affidavit of the Investigating Officer on the submissions by prosecution counsel to demonstrate any compelling reasons why the accused should not be released on bail.

I have considered the rival affidavits and submissions. Article 49 (i) h of the Constitution gives an accused person the right to bail unless there are compelling reasons. Where the State opposes bail it must demonstrate to the court the existence of compelling reasons. The court in all cases however retains the discretion to grant or deny bail.

The primary consideration in a bail application is whether or not the accused shall attend trial. **See Watoro –Vs- Republic (1991) KLR 283**. I am persuaded in this application that the applicant is unlikely to attend his trial given the fact that he was seen stoning the accused to death in broad daylight.

The temptation to abscond would indeed be high given the circumstances of this case. I am disinclined to grant the application.

The application dated 16th September, 2013 is dismissed.

Ruling delivered, dated and signed at Nairobi this 7th day of March, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For accused/applicant

.....: For the State/respondent