



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 2 OF 2013

ANTONY NGUGI KIRORO

.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

1. **Antony Ngugi Kiroro** 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 night of 24<sup>th</sup> and 25<sup>th</sup> day of December, 2012 at Buffalo Bar and Restaurant in Wangige market at Kikuyu District within Kiambu County jointly with others not before court murdered **Robert Njuguna Ndungu**. He denied the charges when he was arraigned in court on 14<sup>th</sup> January 2013. His trial is on-going with one witness having already testified.
2. The accused has now applied for bail pending the conclusion of this trial. His application is however contested by the State on the ground that another suspect in this case is yet to be traced arrested. It is the apprehension of the State that the applicant may abscond trial just like the suspect at large. This apprehension is expressed in the Replying Affidavit sworn by **No. 321338 CIP Jeremiah Musyoki** who is the investigating officer in the case and the submissions of **Ms. Ikol**, the learned prosecution counsel.
3. **Article 49 (i) (h) of the Constitution** on which the application is grounded provides that “*an arrested person has a right .....to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.....*” A reading of this Article shows that bail must in the first instance be granted as of right. The right however is not absolute and can be curtailed by the court where there are compelling reasons. It is the duty of the State to demonstrate the existence of compelling reasons why a suspect should be denied bail. The court however retains the discretion to deny or allow bail depending on the facts and circumstances of each case.
4. I have carefully considered the rival affidavits and submissions in this application. I have further considered the witness statements to which my attention was drawn by both the defence and prosecution counsel. I find no compelling reason within the meaning of Article 49 (i) h to deny the applicant bail.
5. Consequently, I admit him to bail on conditions that shall ensure his attendance at trial. He shall:-
  - (i) execute a personal bond of KShs.1 Million with two sureties of like amount.
  - (ii) not leave the jurisdiction of this court without leave

of the court.

(iii) report to the Investigating Officer at Kikuyu Police

Station once every two weeks until further orders

of the court.

(iv) attend the monthly mentions of his case before the

Deputy Registrar of the Court. The first such

mention shall be on 10<sup>th</sup> June 2014.

**Ruling delivered, dated and signed at Nairobi this 7<sup>th</sup> day of May, 2014**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For accused/applicant

.....: For the State/respondent