



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.84 OF 2013

JOHN KIMANZI MWINGO.....1ST APPLICANT

JAMES OTIENO OCHIENG.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **John Kimanzi Mwingo** and **James Otieno Ochieng** (1st & 2nd accused respectively) are charged with the murder of **Paul Njiri**. It is alleged that they committed the offence on 20th/21st February 2013 at Rangau Village within Kajiado County. They both pleaded guilty and are awaiting trial.
2. The accused now seek to be released on bail. The 1st accused states in his application dated 19th December 2013 that he is confident of his innocence and shall not abscond if released; that he has in the past co-operated with police and shall continue to co-operate; that he has a permanent home at Mwingi where his parents reside; and that he shall attend his trial. The 2nd accused on his part states in his application dated 25th November 2013 that he presented himself voluntarily to the police; that he co-operated with the authorities; that he shall not interfere with prosecution witnesses; and that he shall attend his trial.
3. Both applications are opposed by the State through two replying affidavits filed by **No. 57755 Col.Fredrick Kamairo** who is the Investigating Officer in the case. In both affidavits he states that the right to bail is not absolute but discretionary; that the applicants have been charged with a very serious offence; that there is sufficient evidence against the accused and a high likelihood of conviction; that the applicants may be tempted to flee the jurisdiction of the court for fear of being sentenced to death.
4. At the hearing of the application on 7th April 2014 I heard submissions from learned counsel **Mr. Gisemba, Nyangayo** and **Konga**, respectively for the 1st applicant, 2nd applicant and the Republic. **Mr. Gisemba** submitted that the applicant was not a flight risk and cannot interfere with prosecution witnesses who have already recorded statements. He added that three of the five prosecution witnesses were police officers and that therefore the applicant could not interfere with them. On his part **Mr. Nyangayo** submitted on behalf of the 2nd applicant that he was not a flight risk and that he was a law abiding citizen who presented himself to the police after the alleged offence.
5. From the replying affidavits and the submission of prosecution counsel, it is apparent that the State opposes this bail application on the grounds that the applicants may be tempted to flee the jurisdiction of the court on account of the high possibility of conviction and the attendant death sentence. The investigating officer states at paragraph 4 of the Replying Affidavit that the applicants have been charged with a very serious offence punishable by death and therefore not entitled to bail.

6. I have considered the application. **Article 49 (i) h** of the **Constitution** grants an accused the right to bail pending trial unless there are compelling reasons. In the present application, the State has expressed fear that the applicants are likely to abscond if granted bail because of the seriousness of the offence and the likelihood of being convicted and sentenced to death. Other than so stating, the state has neither explained nor demonstrated to the satisfaction of the court the basis of such fear. I am not persuaded in this case that the applicants are likely to abscond to escape trial. If they believe in their innocence, they may in fact be willing to undergo trial to prove their innocence.
7. In the premises, I find no compelling reason not to admit the applicants to bail. I allow their applications on condition that each applicant shall:-

- i. execute a personal bond of KShs.500,000/- with two sureties of like amount.
- ii. provide evidence of his expected place of permanent abode and address upon release.
- iii. not leave the jurisdiction of this court without leave of the court.
- iv. report to the Investigating Officer at Ongata Rongai Police Station once every two weeks until further orders of the court.
- v. attend the monthly mention of his case before the Deputy Registrar of the Court. The first such mention shall be on 16th June, 2014.

Ruling delivered, dated and signed at Nairobi this 15th day of May, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

-: Court clerk
-: 1st Applicant
-: 2nd Applicant
-: For 1st accused/applicant
-: For 2nd accused/applicant
-: For the State/respondent