



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 17 OF 2011

REPUBLICPROSECUTOR

VERSUS

MICHALE MWANGI KARANGI.....ACCUSED

RULING

1. The matter before this court is a chamber summons of application filed on the 14th March 2013 under certificate of urgency by the accused, Michael Mwangi Karangi who is charged with offence of murder under Sec. 203 red with section 204 of the Penal Code. The applicant seeks for bail pending trial.
2. The application is supported by the annexed affidavit of the applicant. He states that he shall abide by the conditions and terms of the bail imposed if granted and that the neighbours have no qualms with the prayer sought if granted. In the certificate of urgency he states that the case arose out of domestic misunderstanding with relatives and neighbours, who now have no issue with the grant of bail. He adds that the matter has taken long before taking off insisting that it is his constitutional right to be granted bail. He categorically states that if the bail cannot be granted the trial of the matter be expeditiously done on priority.
3. The prosecution severally requested for time to put in a replying affidavit to the application, for instance on the 16th April 2013 and further on the 17th June 2013. Finally when the application came for inter-partes hearing on the 26th March 2014, Mr. Njue for the prosecution stated that he was not opposing the application and the applicant was in person.
4. This is a capital offence that carries a death sentence in section 204. When an offence whose sentence is so severe the courts ought to be cautious in granting bail as the possibility of jumping bail by the accused is increased by the severity of sentence. It is however now a constitutional right of each Kenyan to be granted bail in Article 49(1)(h) which provides,

An arrested person has the right

(h) to be released on bond or bail on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

5. Conditions for grant of bail, which are in interests of justice have been settled as was restated in the case of REPUBLIC v LUCY NJERI WAWERU & 3 OTHERS (2013)eKLR to be:

a) Whether the Accused persons are likely to turn up for trial should they be granted bail;

b) Whether the accused persons are likely to interfere with witnesses;

c) The nature of the charges;

- d) *The Severity of the sentence;*
- e) *The security of the accused if released on bond;*
- f) *In case of illness of the accused, the nature and severity of the illness;*
- g) *Whether the accused persons have a fixed abode within the jurisdiction of the court.*

6. The compelling reasons why the accused ought not to be released on bond ought to be placed before the court before it can exercise its discretion, by balancing the constitutional requirement and the compelling reasons. This is in line with the provision that an accused person is presumed innocent until proved guilty. The reasons ought to emanate from the prosecution which is tasked with the role of ensuring citizens live securely from the accused and also that the accused is also safe from the society from which he comes from.

7. When the prosecution does not contest the granting of bail, it leaves the court with the constitutional requirement since the prosecution is the one charged with the role of security of Kenyans the offenders included. In the ZIMBABWEAN CASE OF AITKEN AND ANOTHER V ATTORNEY GENERAL 1992 (1) ZLR 249 CHIDYAUSIKU CJ set down the checklist of the accused's likelihood to abscond trial when released on bail court should be guided by the following factors:

1. *The nature of the charge and the severity of the punishment likely to be imposed on the accused upon conviction.*
2. *The apparent strength or weaknesses of the state case;*
3. *the accused's ability to reach another country and the absence of extradition facilities from the other countries.*
4. *The accused's previous behaviour.*
5. *The Credibility of the accused's own assurance of his intention and motivation to remain and stand trial;*
6. *That the risk of interference with investigation if alleged must be well founded and not based on unsubstantiated allegations and suspicion.”*

1. The other issue is the issue of expeditious disposal of the matter. The accused has made that prayer in the alternative. The matter is a 2011 matter and has not yet kicked off yet and the prosecution had nothing to file even when granted leave to do so as the accused avers that they have yet to avail evidence against him. This could imply lack of zeal on their part. In the case of S V STOUYANNIDES 1992 (2) ZLR 126 (SC) as quoted by Bhunu J in s v hitschmann (2006) ZWHHC 54

“The amount of time which had elapsed had to be considered together with the crucial factor of the lack of progress in the investigations in this case. The Attorney General acts at his peril if he fails to put before the court specific facts which show that the state case has been strengthened after a long time”.

This means that if there appears to be no progress in a matter from the prosecution side it is a basis for granting bail.

2. Since the bail application is unopposed, the special circumstances required in the Constitution have not been met hence the application is allowed as prayed with conditions that:

a. *The accused bond of Kshs. 500,000 with 2 sureties of same amount*

b. The accused report to the nearest police station every Wednesday of the week.

c. The accused is not to leave his location without reporting to the chief of the area.

d. The accused to attend mention before the Deputy Registrar of this court once after every 30 days at a date to be set by the said Deputy Registrar at the time of approving bond terms.

Dated, signed and delivered at Nyeri this 16th day of May 2014.

J. WAKIAGA

JUDGE

16/5/14

Coram: Before Justice J. Wakiaga

Court clerk - Ndungu

Mr. Njue for the DPP.

Appellant in person.

Court: Ruling is read in open court in the presence of the accused and Mr. Njue. For the state.

J. WAKIAGA

JUDGE

16/5/2014