



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 63 OF 2013

RICKSON IMBWAGA MABIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The accused **Rickson Imbwaga Mabia** is charged with the murder of **Joseph Nginga Kanguru**. He is alleged to have committed the offence on 5th June 2013 at Nyamakima Area along Cross-road in Nairobi County. He now seeks to be released on bail pending trial.
2. The application for bail is opposed by the State. **No. 864449 Cpl. Anthony Kapario** has sworn a Replying Affidavit stating that there is direct evidence against the accused as he was seen committing the offence in broad day light; that the situation on the ground was volatile; that he was a flight risk; that he may interfere with witnesses; and, that he was likely to abscond.
3. At the hearing of the application on 26th March 2014 the learned prosecution counsel **Ms Magoma** submitted that the applicant was likely to interfere with prosecution witnesses who work at various businesses at Nyamakima area where he was also an employee. Further, counsel submitted that the applicant was a flight risk as his only known address was his place of work at Nyamakima.
4. In a rejoinder, **Mr. Olando**, the learned defence counsel submitted that no complaint had been made by the prosecution to show that the applicant had interfered with witnesses. Further he contested the suggestion that the applicant had no fixed abode stating that he had a permanent home in Kakamega County.
5. The constitutional basis of the application is uncontested. Under Article 49 (i) h however, the right may be limited where the court finds a compelling reason to do so. It is the duty of the prosecution to demonstrate the existence of such compelling reason(s). In the present application, the State's fear is that the applicant is likely to interfere with prosecution witnesses who witnessed the commission of the offence. I find that this fear has merely been stated not described and explained to the satisfaction of the court. The real possibility of interference is not demonstrable from the Replying Affidavit of the investigating officer and the submissions of prosecution counsel.
6. Further, the prosecution has not persuaded the court on the likelihood of the applicant absconding. The mere fact that the applicant has not disclosed his usual place of abode in his application does not mean that he cannot attend his trial. The non-disclosure cannot of itself be used to infer the likelihood of absconding trial. Nonetheless, I consider that the prosecution's fear can be cured by a condition that the applicant furnishes the court with evidence of his usual place of abode where he may be found should the investigation require to trace him.
7. For the foregoing reasons, I find that the prosecution has not demonstrated any compelling reason

why the applicant should be denied bail. I allow the application on condition that the applicant shall:-

- i. execute a personal bond of KShs.1 Million 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 Kamukunji 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

.....: Applicant

.....: For accused/applicant

.....: For the State/respondent