



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 36 OF 2014

EDWIN KARIUKI KAMAU1ST APPLICANT

JOSEPH ANANDA MWANYIKA.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Edwin Kariuki Kamau** and **Joseph Ananda Mwanyika** are charged with the murder of Robert Ndungu. They are alleged to have committed the offence on the 1st day of May 2014 at **Shabir Centre, Kirinyaga Road** within **Kamukunji area** in **Nairobi County**. When arraigned in court on 26th of May 2014, they denied the charges and were remanded in custody. They now seek to be released on bail pending their trial. In their respective applications dated 5th June 2014 and 28th May 2014 they state that the court has inherent and original jurisdiction to grant them bail and that they will abide with any terms and conditions that the court will deem fit to impose.

Both applications are opposed by the State through the Replying Affidavit of **No. 69585 PC. Vincent Lang'at** who is the investigating officer in this case. He states that the applicants committed the offence in broad daylight without fear and that the community would not readily accept them back; that there was a high possibility of the applicants' interfering with prosecution witnesses particularly PW1 and PW2 who were eye witnesses and reside in Ngara area where the accused persons also reside; that the prosecution had weighty evidence which is likely to secure a conviction therefore making the temptation to jump bail highly likely; and, that the prosecution was ready to ensure the expeditious trial of the accused in order for the ends of justice to be met.

At the hearing of the application on 24th June 2014, **Mr. Ojienda** for the applicants urged the court to release the applicants stating that there was no likelihood of them being harmed by the members of the public. He further submitted that the applicants were not residents of Ngara as stated by the prosecution. He prayed for reasonable bail terms stating that that applicants were willing to comply with the terms and attend court for the trial.

In opposing the application **Mr. Okeyo** for the State relied on the Replying affidavit of **PC. Vincent Lang'at**. His submission was that the applicants were likely to abscond trial considering the weight of the evidence against them and the gravity of the charges they were facing. On the issue of witnesses he urged the court not to release the applicants on bail before two key prosecution witnesses PW2 and PW3 testify in court. He also urged the court not to release applicants as the offence took place in broad daylight and that there was heightened tension in the area which may cause the applicants to be harmed by members of the public.

The Constitutional basis for the application has not been contested. It is admitted by the State that the applicants are entitled to be under **Article 49(i) (h) of the Constitution**. I will therefore not dwell on the same. In considering the application, however, I have paid attention to the reasons raised in opposition by the State. One of the reasons given by the State in opposing bail is that the applicants were likely to be harmed by members of the public. Although this contention appears in both the replying affidavit of **PC Vincent Lang'at** and the submissions of the prosecution counsel, no evidence was led to convince the court of the real likelihood of members of the public taking the law into their hands and harming the applicants. I must therefore dismiss the fear as unfounded. Equally, I am not persuaded that the applicants were likely to abscond trial merely because of the gravity of the charges they are facing. If they believe in their innocence they might as well wish to stand trial to clear their names.

On the question of likelihood of interference with prosecution witnesses, it has been stated that the offence was committed in broad daylight and that prosecution witnesses PW1 and PW2 witnessed the stabbing of the deceased and also watched helplessly as he was thrown down the stairs from the third floor of Shabir Centre.

While the evidence of the two witnesses is yet to be tested at trial, the possibility of such witnesses who have given extensive statements being intimidated or experiencing fear at the release of the applicants is real. The prosecution's fear cannot in the circumstances be said to be far-fetched. I am persuaded that the interest of justice in this case would demand that the testimony of the two witnesses be taken before the applicants can be released on bail.

In the premises I exercise my discretion to deny the applicants bail at this stage. Their respective applications are dismissed.

Ruling delivered and signed at Nairobi this **9th** day of **July**, 2014

R.LAGAT-KORIR

JUDGE

In the presence of:-

..... :Court clerk
..... :1st Applicant/Accused
..... :2nd Applicant/Accused
..... :Counsel for both Applicants/Accused
..... :Counsel for the Respondent