



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.68 OF 2014

BENSON NJUGUNA KAMAUAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused Benson Njuguna Kamau is facing trial for the murder of one Paul Nyamwea Nyamwamu. According to the information filed in court, he committed the offence on 23rd July 2014 at Mwiki Muritithia area of Kasarani District within Nairobi County.

The accused now seeks to be released on bail pending trial. In his application dated 8th September 2014 he deposes that he has a Constitutional right to bail and to be presumed innocent until proved guilty; that he shall not interfere with prosecution witnesses and that he does not pose a flight risk. The accused has filed a response to the Replying Affidavit filed by the State and makes further averments that he does not reside in the same plot with the key witness one Paul Thuo Kamau and reiterates his earlier averments that he shall not interfere with prosecution witnesses and shall not abscond trial.

The State has opposed the application through the Replying Affidavit of **No. 58075 PC Patrick Mwaura** of Mwiki Police Station and submissions of **Mr. Gitonga** the learned prosecution counsel. The objection is based on three main issues to wit that the applicant was likely to interfere with witnesses; that his accomplice was still at large; and that he was a flight risk not having demonstrated his fixed abode; and, not having supported his assertion that he was a family man with school-going minor children.

I have carefully considered the application. The law grants an accused person the right to bail. The only fetter to that right is the existence of compelling reasons under **Article 49 (i) h**. In the present application, the State's objection to bail is the fear that the applicant was well known to the prosecution witnesses particularly one Paul Thuo Kamau and one Mwangi.

In their submissions both the applicant and the respondent referred me to the witness statement of Paul Thuo which I have perused. He says in his statement that he knows both the deceased and the accused as he accommodated them sometimes along with one Mwangi who is said to have vanished without making a statement. It follows then that Paul Thuo is a critical witness to the prosecution. However, there is nothing in his statement to the police to suggest that he was closer to the accused than to the deceased. On the contrary it seems that both the accused and the deceased enjoyed his hospitality. In the premises, I do not find the prosecution's argument that he will be influenced by the accused convincing. As for the witness who is said to be at large, there is nothing to demonstrate that he will be traced if the accused remains in custody.

In the result, I find that the State has not demonstrated to the satisfaction of the court any compelling reasons to deny the applicant bail. His application is allowed on condition that he shall:-

- i. Pay Cash bail of KShs.500,000/- with one surety of similar amount or in the alternative execute a personal bond of Kshs.500,000/- with two sureties of KShs.500,000/- each.
- ii. Not contact or in any way communicate with prosecution witnesses.
- iii. Show evidence of his permanent place of abode.
- iv. Report to CID offices Kasarani once every 2 weeks till further orders of the court.
- v. Attend monthly mentions before the Deputy Registrar of the Court. The first such mention shall be on **20th November**, 2014

Ruling delivered and dated at Nairobi this 16th day of October, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....:	Court clerk
.....:	Accused/Applicant
.....:	For Accused/Applicant
.....:	For the State