

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION

CRIMINAL CASE NO.63 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

MARCEL JUMANNE DALANCE.....ACCUSED

RULING

The Accused, Marcel Jumanne Dalance is charged with **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars in the information are that on the night of 10th and 11th July 2014 at Alpha House in Juja area of Kiambu County, the Accused murdered Faith Vicky Owuor. When the Accused was arraigned before this court, he pleaded not guilty to the charge. He has now made an application pursuant to **Articles 49(1)(h)** and **50(2)(a)** of the **Constitution** seeking to be released on bail pending the hearing and determination of the case. The Accused states that he is a first year student at Jomo Kenyatta University and would require to attend classes during the pendency of the case. He further stated that he is asthmatic and would require constant medical attention which is not ideal in the prison conditions that he is held in remand. He states that in the period of the trial, he would be staying with his parents whose permanent home is in Juja. He undertook to attend trial without fail. He promised that he would abide by any terms or conditions that may be imposed by the court. The application is supported by the affidavit of Jumanne Ezekiel Aluoch, the father of the Accused.

The application is opposed. Corporal E. Mwangangi, the investigating officer of the case swore a replying affidavit in opposition to the application. He stated that the Accused person had prior to causing the death of the deceased threatened to kill her via text message. He was apprehensive that should the Accused be released on bail, he would interfere with the prosecution witnesses, especially a key prosecution witness who was a friend of the deceased. The investigating officer was not impressed by the Accused's claim that he would not be offered adequate medical attention while in prison. He deponed that there were adequate medical facilities in prison to cater for the medical needs of the Accused. If his medical condition warrants it, he would be escorted to Kenyatta National Hospital for appropriate treatment. He stated that, in view of the Accused's past behaviour, it was likely that he would be a flight risk and would fail to attend court during the hearing of the case. He urged the court to disallow the application.

At the hearing of the application, this court heard oral rival submission made by Mr. Nyangweso for the Accused and by Ms. Maari for the State. They essentially reiterated the contents of the application and the replying affidavit. The issue for determination by this court is whether the Accused made a case for this court to release him on bail pending trial. **Article 49(1)(h)** of the **Constitution** grants any person charged with a criminal offence the right to be released on bail pending trial unless there are compelling reasons to make the court reach a contrary finding. What constitutes "**compelling reasons**" has not been defined by the **Constitution**. However, from several decisions that have been rendered by the various courts since the promulgation of the **Constitution**, compelling reasons include: the likelihood that the Accused will fail to attend court during trial, the possibility that the Accused may interfere with witnesses, if the life of the Accused person or any of the witnesses shall be endangered in case the Accused is released on bail, and where it is alleged that the Accused person may likely commit an offence if he is released on bail. These reasons are not exhaustive. However, the court will consider the circumstances of each case, and the interest of justice, taking into consideration that an Accused person is presumed innocent until he is

proved guilty by lawfully established court.

In the present application, it was common ground that the Accused is a University student. He has been charged with the serious offence of murder. He has pleaded with the court to be released on bail pending trial to enable him continue with his studies while attending trial. The father of the Accused swore the affidavit in support of the application in which he stated that he would abide by any condition that may be imposed by the court to secure the release of the Accused on bail pending trial. On the other hand, the prosecution is apprehensive that taking into consideration the circumstances in which the offence was committed, it was likely that the Accused would interfere with the prosecution witnesses. The prosecution is of the view that there were compelling reasons to persuade the court from releasing the Accused on bail pending trial.

On evaluating the facts of this case, it was apparent that the prosecution did not lay sufficient compelling reasons to persuade this court not to release the Accused on bail pending trial. The right of an accused person to be released on bail pending trial is constitutionally guaranteed. What the court is concerned with is whether the Accused will attend court during trial. In the present application, the Accused is a student. His father has undertaken to stand surety on his behalf. The concerns of the prosecution that the Accused will interfere with witnesses prior to the hearing of the case will appropriately be addressed by the court. This court is persuaded that the education of the Accused should not be interfered with during the pendency of the hearing of the case. In the premises therefore, the Accused is hereby released on bail pending trial on condition that he posts a bond of Kshs.1 million with two sureties of the same amount. The Accused shall not contact any of the prosecution witnesses during the pendency of the trial. He shall be required to attend court on the appointed dates of trial without fail. He shall attend court once every month for mention of case before the Deputy Registrar of this court. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2014

L. KIMARU

JUDGE