

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO.24 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY KARIUKI WALUGORO *alias* KARISH.....ACCUSED

RULING

The Accused, Stanley Kariuki Walugoro *alias* Karish is charged with **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. According to the information, the particulars of the offence are that on 28th March 2014 at Mukuru Kwa Njenga Village, the Accused murdered Joseph Mutiso Mutuku. When the Accused was arraigned before this court, he pleaded not guilty to the charge. He has made an application to be released on bail pending trial. He states that he is a person of fixed abode and is not a flight risk. He has no intention of interfering with witnesses and was willing to abide by any terms the court may impose as a condition for his release on bail. The application is supported by the annexed affidavit of the Accused. The application is opposed. PC Mithamo, the investigating officer, swore a replying affidavit in opposition to the application. He stated that there were compelling reasons why the Accused should not be released on bail. He stated that the Accused knew most of the witnesses because they were his neighbours. He was likely to interfere with them. He urged the court to disallow the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Nyaberi for the Accused and by Ms. Maari for the State. Learned counsel essentially reiterated the contents of the application and the replying affidavit. **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, the prosecution opposed the application on the ground that the Accused will interfere with the prosecution witnesses. It is the prosecution’s case that the said witnesses, being neighbours of the Accused, will likely be negatively influenced by the Accused if he is released on bail. On his part, the Accused has stated that he would not interfere with the witnesses if he is released on bail pending trial. This court is of the view that the fact that the Accused lives in the same locality as the witnesses does not automatically translate to the assumption that the Accused will interfere with the said witnesses. The prosecution did not present cogent evidence to support their assertion that the Accused will likely interfere with the prosecution witnesses if he is released on bail pending trial. The prosecution has not established a compelling reason for this court not to release the Accused on bail pending trial.

In the premises therefore, the Accused shall be released on bail pending trial on condition that he posts a bond of Kshs.1 million with one surety of the same amount. The Accused shall be required to attend court without fail. During the pendency of the trial, he shall not contact or communicate with the prosecution witnesses. He shall be required to attend court before the Deputy Registrar of this court once every month until the hearing of the case or until further orders of the court. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2014

L. KIMARU

JUDGE