



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 7 OF 2013**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**PETER KURIA KIARIE..... APPLICANT**

**RULING**

**Peter Kuria Kiarie** is charged with the murder of one John Karanja Chege. The offence was allegedly committed on 30<sup>th</sup> December 2012 at Karatu Sub-location in Gatundu South within Kiambu County. The accused was arraigned in court on 16<sup>th</sup> January 2013 when he pleaded not guilty to the charge and was remanded in custody.

The accused now seeks to be released on bail pending trial. His application dated 26<sup>th</sup> February 2013, is brought under various articles of the Constitution including but not limited to **Articles 20,22,27,28,29,49** and **50**. He avers in his supporting affidavit that he is not a flight risk; that he will attend court; that he shall not interfere with witnesses; and, that it is his constitutional right to be released on bail.

The application is opposed by the State through the replying affidavit of **No. 81800 Cpl. Paul Kipkore** on grounds that the applicant was a flight risk; has no fixed abode, was likely to interfere with witnesses and was likely to abscond given the compelling prosecution evidence that would likely lead to conviction.

After considering the affidavit evidence and the submissions of **Mr. Oundu** and **Ms. Ikol** for the applicant and respondent respectively, I find that only three critical issues emerge in this application. These are the likelihood that the applicant may abscond; may interfere with witnesses; or may jeopardize his safety.

Firstly, the State opposes the application for fear that the applicant will abscond. It is the State's view that it has strong evidence which is likely to lead to the conviction of the applicant. I find it premature at this stage to give any consideration to the evidence as the same is yet to be tested at the trial. I therefore do not find the same to be a strong basis for denial of bail at this stage.

The second reason advanced by the State is that the applicant was likely to interfere with prosecution witnesses. The prosecuting counsel has submitted that the key witnesses lined up to testify against the applicant are his close relatives and neighbours. Key among them is his mother with whom he was having a serious quarrel in which the deceased intervened and thereby met his death. Other witnesses are said to

be either family members including his brother, and close neighbours who witnessed the accused assaulting the deceased. It is the prosecutor's submission that the release of the applicant may lead to interference with the witnesses as within the family there may be a flow of sympathy based on familial proximity.

The applicant on the other hand has deposed in his affidavit that he will not interfere with witnesses. His counsel has also submitted that the prosecutor has not demonstrated the nature of the alleged interference. The question before me then is whether there is indeed a likelihood of interference with witnesses and whether such interference is a compelling reason not to release the applicant on bail.

I consider the likelihood of interference with witnesses to be a critical factor in a bail application. This is because if either party in a trial were allowed to interfere with witnesses, such interference would not only compromise the integrity of the testimony yet to be presented to court but would in the end result in an injustice. In **R. Vs. Dwight Sagaray & 4 others, Criminal Case No. 61 of 2012**, the court had this to say on the issue of interference:-

“As I have held before, interference with prosecution witnesses is in my view a compelling reason not to admit an accused person to bail as such interference goes to the root of the trial and is an affront to the administration of justice.” On the standard to be applied when dealing with the question of interference the court went further to state thus:-

“For the prosecution to succeed in persuading the court on this criteria however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others”. Emphasis added.

In this application I am satisfied that the prosecution has indeed demonstrated the likelihood of interference. It has laid before the court some facts and has not merely asked the court to speculate. See **Panju Vs. Republic 1973 E.A. 284**.

The third reason advanced by the State in opposing this application relates to the personal safety of the applicant. They state that the applicant was likely to be harmed if released. In submissions before court, **Ms. Ikol** narrated that soon after the death of the deceased, the neighbours and the deceased's family were enraged and upon discovering that the accused had escaped set ablaze his three houses. It is my view that such happenings should not be taken lightly. While it is reprehensible for anyone to take the law into their own hands and commit criminal acts to protest the actions of the accused, I consider it not desirable for the court to release the accused. It is apparent to me that the release of the applicant at this stage may reignite new emotions and cause societal disharmony and breach of the peace. Such action would neither serve the public interest nor meet the interests of justice in this case.

Accordingly, I find the application not merited. It is dismissed. The applicant shall be at liberty to renew his application once the key witnesses have testified and the situation on the ground has improved.

**Ruling delivered, dated and signed at Nairobi this 1st day of October, 2013**

**R. LAGAT - KORIR**

**JUDGE**

**In the presence of:**

.....: **Court clerk**

.....: **Accused/Applicant**

.....: **For the accused/applicant**

.....: **For the State/respondent**