



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 6 OF 2012

REPUBLIC.....RESPONDENT VERSUS

JOHN MAINA NJIIRI.....1ST ACCUSED/APPLICANT

SOLOMON THUKU KUNGU2ND ACCUSED/APPLICANT

RULING

John Maina Njiiri and **Solomon Thuku Kungu** are charged with the murder of **Allan Ngure Munyi**. The particulars of the charge are that on 7th January 2012 at Njiru Estate within Njiru District, Nairobi County jointly with others not before court murdered **Allan Ngure Munyi**. They were arraigned in court on 1st February 2012 and they pleaded not guilty. Their trial is yet to commence.

The two accused have now applied to be released on bail pending trial. By their respective applications dated 24th April 2013 and 14th March 2013 have been consolidated hence this single Ruling.

The 1st accused states in his application filed by **Mutitu Thiong'o & Co. Advocates** that he has been in custody since January 2012; that he worked as a driver and has two young children who depend on him; that he is entitled to bail under the Constitution and that he will co-operate with the investigation and will not interfere with witnesses.

The 2nd accused avers in his supporting affidavit sworn on 14th March 2013 that he is ready to and willing to attend court; that he is not a flight risk; that he will not interfere with witnesses and that there were no compelling reasons to deny him bail.

Both applications are opposed by the State through the Replying Affidavit of **No. 70613 Sgt. Bethwel Kiptanui** who is the investigating officer in the case. He states that the accused persons were found with the motor vehicle which was being driven by the deceased prior to his death; that the applicants had no fixed abode; and, that they were a flight risk.

Mr. Mutito prosecuted both applications at the hearing on 11th July 2013. He urged the court to release the applicants pursuant to **Article 49 (i) (h) of the Constitution**. **Mr. Okeyo** for the respondent, while opposing the application, asked the court to consider that the applicants were charged with a serious offence of murder which carries a death sentence which may make them so scared as to abscond. He urged the court to exercise discretion and deny the applicants bail.

Article 49 (i) (h) of the Constitution on which the application is grounded provides that “*an arrested person has a rightto be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.....*” It is the State’s duty where it

opposes the release of an accused on bail to demonstrate the existence of compelling reasons envisaged under **Article 49(i) (h)**.

In the present application I find that the State has not demonstrated to the satisfaction of the court any compelling reasons why the applicants should be denied bail. The prosecuting counsel has merely suggested to the court that the applicants might take flight. He has laid no basis whatsoever for the existence of such fear.

In the circumstances I allow the applications but on the following strict conditions to ensure that the applicants do attend trial:-

- i. Each applicant shall execute a personal bond of One million shillings (Kshs.1,000,000/-) with two sureties of KShs.1,000,000/- each.
- ii. They shall report to the C.I.D. Kayole once every two weeks until further orders of this court.
- iii. They shall not communicate with or in any other way interfere with the prosecution witnesses and any such interference shall lead to the automatic cancellation of this bond.
- iv. They shall furnish the court with evidence of their residence and address and inform the Deputy Registrar of the court whenever they change such residence and address.
- v. They shall attend court for the mention of the case once every month. The first of such mentions shall be on 5th November, 2013

It is so ordered.

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

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

John Maina Njiiri : 1st accused/applicant

Solomon Thuku Kungu : 2nd accused/applicant

.....: For the 1st accused/ applicant

.....: For the 2nd accused/applicant

.....: For the state/respondent