



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 6 OF 2011

REPUBLIC.....RESPONDENT

VERSUS

DAVID GATEMBO MBETI.....APPLICANT

RULING

The applicant **David Gatembo Mbeti**, seeks to be admitted to bail pending the conclusion of his on-going trial. He is facing trial for the murder of Antonius Odhiambo. The offence is said to have been committed on 8<sup>th</sup> January 2011 at Nation Media in Embakasi Area within Nairobi Province.

The applicant states in his application dated 6<sup>th</sup> June 2013 that he has been in custody since 2011; that substantial ground has been covered in his case; and that there were no compelling reasons not to be released. He further states in his supporting affidavit that he was a matatu conductor and is willing to abide by any bond terms if released.

At the hearing of the application on 2<sup>nd</sup> October 2013, **Mr. Wamwayi** for the applicant expounded on the grounds of the application and the averments in the applicant's supporting affidavit. He underscored the constitutional basis upon which the application is brought and the undertaking of the applicant to continue attending court if released.

The application is opposed by the state through the Replying Affidavit sworn by **No. 70406 PC Joseph Ologe** and the submissions tendered at the hearing by **Ms. Matiru** the prosecuting counsel. It is the state's contention that the applicant was seen stabbing the deceased and that owing to the availability of strong evidence, he was likely to abscond to avoid conviction and the severe sentence that would follow. The state has urged the court to exercise discretion and deny the applicant bail. According to the prosecuting counsel, the state undertakes to expeditiously prosecute the matter which is already part-heard.

In considering this application I am guided by **Article 49 (i) h of the Constitution** which entitles any arrested person to be granted bail pending trial. The only fetter to this right is the existence of compelling reasons. It has been stated before that the duty of demonstrating the existence of compelling reasons rests with the prosecution. See **Republic Vs. Danson Mgunya & Kassim Sheebwana Mohammed [2010] eKLR**. It has also been stated that the determination of what qualifies to be "compelling reasons" is wholly left to the discretion of the court. See **Republic Vs. Dwight Sagaray & 4 others Nairobi Criminal Case No. 61 of 2012 [UR]**. See also **Republic -Vs- Patius Gichobi Njagi & 2 others. Nairobi HCCR. No. 45/2012 (UR)**.

In the present application both the applicant and the respondent acknowledge that substantial

progress has been made in the trial. My perusal of the record shows that so far three out of seven witnesses have testified. It is also evident from the record that both parties initially contributed to delay in the trial as they sought time to engage in plea negotiations which later came a cropper.

Taking all facts and circumstances of this case into consideration, I am persuaded that the interests of justice shall better be served by the expeditious conclusion of the trial rather than admitting the applicant to bail.

The application is thus dismissed.

**Ruling delivered, dated and signed at Nairobi this 6th day of November, 2013**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

- .....: Court clerk
- .....: Applicant
- .....: For the applicant
- .....: For the State/respondent