



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.24 OF 2010

REPUBLIC.....RESPONDENT

VERSUS

GEORGE WAFULAACCUSED/APPLICANT

RULING

The applicant **George Wafula** is the 3rd accused in Criminal Case No. 24/2010. His co-accused are Beatrice Musimbi and Dickson Mulima. They are facing trial for the murder of one Luz Hines Rouffaer. The offence is alleged to have been committed between 23rd and 25th April 2010 at Nanu Apartments in Kilimani Area within Nairobi Province.

The 3rd accused has now applied to be released on bail pending the conclusion of their on-going trial. It is his averment and submission through his counsel **Mr. Anambo** that he has a constitutional right to bail and that he undertakes to avail himself for trial. The State opposes the application vide the sworn affidavit of **No. 32409 Cpl. William Saiyanga** and the submissions of **Mr. Karuri** who is the prosecuting counsel in this case.

From the replying affidavit and submissions, it is apparent that the State opposes bail on the ground that the case has progressed substantially and several witnesses have testified. It is the prosecution's view that the evidence already tendered may prompt the applicant to abscond owing to the possibility of conviction at the end of the trial.

I have carefully considered the rival affidavits and submissions. The law is now settled that any accused person has given a right to 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.....*" This means that the only fetter to the right is the existence of compelling reason(s). The court has discretion to determine whether or not there exist such reasons. It must be persuaded that the reasons advanced by the State are compelling.

In this application, and as already stated above, it is the State's fear that the applicant may abscond if granted bail. This fear is borne out of the fact that a big number of witnesses have already testified and that their testimony is likely to lead to the conviction of the accused.

I cannot at this stage comment on the evidence on record. However, I observe from perusing the record that the trial has progressed substantially with a total of 14 witnesses having testified leaving only 2 witnesses. The prosecution's fear is in my view not unfounded as the temptation to abscond would naturally be higher depending on the strength of the testimony already on record. It is my view that the

release of the applicant at this stage would not serve the interests of justice.

Consequently, I dismiss the application dated 21st March 2011.

Finally, I observe that there are no applications in respect of the 1st & 2nd accused in this matter for the court to consider. All three accused shall therefore remain in custody pending the conclusion of their trial.

Ruling delivered, dated and signed at Nairobi this 30th day of September, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For the accused/applicant

.....: For the state/respondent