



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 66 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

JOSEPH MBURU NJOROGE.....APPICANT

RULING

The accused, **Joseph Mburu Njoro**ge is facing trial for the murder of Samuel Ndungu Ngige. It is stated that he committed the offence on 11th June 2013 at Ricards Flats in Ngara Area, Starehe within Nairobi County. The accused now seeks bail pending his trial which is yet to commence.

In his application dated 8th July 2013 he sets out the grounds that the offence with which he is charged is bailable; that he is asthmatic and needs specialized treatment; and, that he will abide by any conditions set by the court. The application is supported by two affidavits sworn by the applicant and his mother respectively. In his affidavit, the applicant avers that he is the sole bread winner of his young family and is asthmatic; and, that he is ready to abide by any conditions given by the court. Marcy Muigai Njoro

ge the (applicant's mother) has on the other hand deposed on the positive character and health of the applicant. She avers that he is hardworking and industrious person and also suffers from an asthmatic condition which requires prescriptive medication to control.

The application is opposed by the State through the Replying Affidavit sworn on 6th August 2013 by **Ag. Sgt. Wesley Lagat** who is the investigating officer in the case. He avers that the accused's constitutional right to bail is not absolute but subject to the discretion of the court; that the accused chased the deceased along the balcony wherein the deceased fell and met his death; that the prime witnesses were mutual friends to both the deceased and the accused hence a high probability of interference with witnesses; that the averment that the accused suffers from asthma is not supported by any medical report; and, that there are compelling reasons not to grant the applicant bail.

At the hearing of the application on 13th August 2013, I heard submissions from **Mr. Ratemo** and **Mr. Konga** for the applicant and respondent respectively. **Mr. Ratemo** reiterated the averments in the supporting affidavits and further added that there was no evidence that the applicant would interfere with the prosecution witnesses. He further submitted that the applicant requires medical attention as indicated in a referral letter which was issued by Kiambu District Hospital for the applicant to be attended to at the Kenyatta National Hospital.

In opposing submissions, Mr. Konga expounded on the averments in the Replying Affidavit of **Ag. Sgt. Wesley Lagat**. He explained that the likelihood of the applicant interfering with witnesses was real. In his submission, prosecution witness (D1) who was an eye witness was a mutual friend of both the deceased and the applicant. With respect to the medical condition of the applicant **Mr. Konga** submitted

that the referral note attached to the application was not a medical report and further that the applicant could access the requisite medical care at the remand prison.

I have considered the application. I take guidance from **Article 49(i)(h) of the Constitution** that an accused person has a right to bail and that the right can only be curtailed by the court on account of any compelling reasons. I am acutely aware that the court has the discretion to consider the facts and circumstances of each case in order to judiciously exercise its discretion in granting or refusing to grant bail.

It has been argued in this application that the applicant and the deceased were friends and that the deceased met his death when he fell off the balcony of the 5th floor residence of the applicant after being chased by the applicant. D1 who is said to be a mutual friend to both the applicant and the deceased is lined up to be a prosecution witness. Under those circumstances, I am persuaded there is a real likelihood of interference with the said witness. I find that it is important to safeguard the integrity of the testimony of the key witness in the case. The prosecution's fear of the probability of such interference is not without basis.

In the premises, I am disinclined to allow the application for bail at this stage. The applicant shall be at liberty to renew his application once the key witnesses have testified.

The application dated 8th July 2013 is dismissed.

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

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the applicant

.....: For the State/respondent