



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ndingili (Criminal Case 21 of 2019)
[2023] KEHC 22589 (KLR) (24 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 21 OF 2019**

**TM MATHEKA, J
AUGUST 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MAINGI MASIKA NDINGILI ACCUSED

RULING

1. The accused person is charged with murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. It is alleged that on the night of 4th and 5th August , 2019 at Emali Sub location Nzau Sub county within Makueni County he Murdered Onesmus Muendo Musau.
2. He denied the charge on October 7, 2019 and was admitted to bond terms of Kshs 350,000 with one surety of similar amount.
3. By the time I took over the matter on March 23, 2023 the hearing had not started and quite unfortunately by the time the same come for hearing before me the members of the Law Society of Kenya who signed up to offer pro bono legal services to murder suspects downed their tools on account of a misunderstanding between them and the office of the Chief Registrar Judiciary about their tokens. The hearing collapsed on the two dates it was scheduled for the May 30, 2023 and June 7, 2023.
4. These circumstances left the court wringing its hands in search of a solution to the looming delay in the hearing of these cases.
5. A relook at his bond terms – as I noted since he was admitted to bond he had not been able to raise the bond terms.
6. I sought a pre-bail report from Probation and After Care Services the same was filed and sent to me via email.



7. I have carefully considered the report - and note that the accused is the last born and the only son of his parent. He has three sisters.

The unfortunate thing is the description by the probation officer that the family is poor yet they have a parcel of land and place where they all call home. They are involved in some small scale business and casual jobs.

8. The accused was said to have been running a food kiosk when he was arrested in connection with this offence. Once again - I have to call out the probation after care service officer from its obsession with the description of all people as 'poor' from poor back ground or of 'abject poverty' yet these are people living on their own family land, living off the land and taking available jobs to earn money instead of paying too much attention to the things that people have or do not have - the PACS officer should take time to also analyse the social - capital of families - so that the place of these people in the justice system does not depend solely on whether they have money or land or property. That would mean that a person's economic status is a stumbling block to access to justice, yet justice is to be done to all - irrespective of status. The probation after care service officer should approach the issue of security for surety with what not just what the family has in material things, what repute they have whether the local religious leader /administrators and even the clan can vouch for them Otherwise what then is the value of all the detailed information the probation aftercare service officer gives with regard to the genealogy of the family of the accused - their clan etc if it is not of any value to the issue at hand?

9. This information must be of some value to the social inquiry - and should be analysed to add value to the capital available to the accused person for purposes of bond.

10. The probation after care service officer has indicated that she was unable to obtain any information about the victim from the accused person.

11. It is evident that the probation after care service officer did not interrogate over stake holders - the two investigating officer, the OCS where the incident was reported or the ODPP who would have information on the family of the deceased. This is because it is possible that the accused and the deceased did not know each other well enough for him to know the family of the deceased would be known by the police - the investigating officer and the DCI officer.

12. Nevertheless - there is nothing to stop the court from reviewing the bond terms - though it is imperative for the record, from the family of the victim to be interviewed.

In the circumstances

i. The bond granted to accused of Kshs 350,000 with surety of similar amount is reviewed to bond of Kshs 100,000 with one surety of similar amount or 2 sureties each of Kshs 50,000

ii. In the alternative cash bail of Kshs 100,000, with contacts, Identity documents and introduction letter from the chief of the depositor.

iii. The probation aftercare service officer to endeavor to interview the family of the victim and file a supplementary report within 14 days hereof .

iv. Mention on September 7, 2023 before the Deputy Registrar for compliance.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 24TH AUGUST 2023

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MUMBUA T. MATHEKA

JUDGE

