



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

MURDER NO. E011 OF 2021

REPUBLIC.....PROSECUTOR

-VERSUS-

DANIEL KAHUHA KAHATO.....1ST ACCUSED

WILSON MUTHINJI MWANGI.....2ND ACCUSED

THOMAS WAFULA MABONGA.....3RD ACCUSED

RULING

1. The accused persons are charged with offence of *Murder contrary to Section 203 as read with Section 204 of the Penal Code*; Particulars being that on the night of 27th and 28th of February, 2021, at unknown time, within Table Land Village Igwamiti Location, Nyahururu Sub – County, Laikipia County, murdered **Leonard Kariuki Kihonge**.
2. They took plea and pleaded not guilty to the charge and matter was fixed for hearing on 26/01/2022.
3. Meanwhile they sought to be released on bail/bond pending trial.
4. Both defence and prosecution sought to rely on record on the bail/bond application. The court had earlier ordered the Pre-Bail-Report to be filed plus Investigation Officer's affidavit on the background of the accused persons' and situation on the ground.
5. The reports for each of the accused persons were filed and the court has perused the same reports and the Investigation Officer's affidavit which was filed.
6. The wife of the deceased is said to be apprehensive that the release of the accused persons may put her in danger as they are likely to harm her. There is also a report that the situation on the ground is still hostile and the accused persons may be harmed as even before they were arrested there were attempts to lynch them.
7. The Investigation Officer has concurred with above Pre-Bail Reports sentiments by the probation officers and on top of that he has sworn that the accused persons and especially accused 1 and 3 are flight risk and have no known fixed places of abode. Also that they may interfere with the witnesses.
8. They may never be traced if released on bond.
9. The court acknowledges the accused's right to bond pending trial vide *Article 49 of the Constitution* however there are limitations to that right where there are compelling reasons.
10. The issue of possibilities of harming the deceased's widow, possibility of absconding and interfering with witnesses are elements which lie on the realm of compelling reasons to deny bond.
11. Also not forgetting the possibility of the accused being harmed is also a ground for denying or delaying the grant of bail pending trial.
12. In the circumstances of the instant case, I find it justified in delaying grant of bail/bond pending trial but emphasize in fast tracking the hearing of the matter.

13. Thus the court denies the accused persons bond for now to await the situation on the ground to shift from hostility to a more favourable one.

14. Meanwhile, the hearing of the matter to proceed.

Dated and Signed at NYAHURURU this 26th day of January, 2022.

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CHARLES KARIUKI

JUDGE