



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER E006 OF 2022

REPUBLIC.....ODPP

VERSUS

JKK.....ACCUSED

R U L I N G (P R E - B A I L)

1. The minor, sixteen (16) year old JKK is charged with **Murder Contrary to Section 203 as read with 204 of the Penal Code**. It is alleged that on 20th January 2022 at Ikerero area, Nakuru North Sub County, Nakuru County he murdered Benson Rubia Mukatia.

2. He pleaded not guilty on 9th February 2022. He sought for age assessment. A lady who was in court and who was said to be his mother said he was born on 14th March 2004 but that there was no documentary evidence.

3. The report on age assessment came back saying that he is approximately 16 years old.

4. There was no objection to bond and I asked for a Pre -Bail Report to assist the court in making appropriate orders on bail.

5. A report was filed by Elizabeth Kwamboka, Probation Officer, Nakuru County. She states that the report is to assist the court during the bond/bail proceedings and among other factors including possibility of flight risk. The report in the recommendation section states:

“Accused pleads for a free bond... His parents despite showing some hesitancy on his show up in court, they are willing to give their identity cards to stand surety... if considered for bail the accused will relocate to his home in Uasin Gishu.”

She also states that the area chief has committed to offer close supervision.

6. From the record the Offence was committed in Nakuru County, and the accused’s home is in Uasin Gishu. It is said in the report that the accused was employed by the victim as a motor bike rider upto the time of his arrest.

7. The victim’s family is not agreeable to his release on bond on issue of flight risk.

8. The Probation Officer states elsewhere that;

“The parents though willing to stand surety for him are fearful is (sic) he will honor the conditions of the court.”

9. As the court I request for these reports because they do make a difference, as they serve to give the court a peek at the social economic background of the subject of the report. They are also socio- legal reports and are expected to meet a certain standard.

10. It is expected that the officer conducting the inquiry and making the recommendations has done his or her ground work thoroughly for the just determination of the issue at hand with the professional guidance rendered to court. Factual gaps ought to be addressed. For instance, when the report states that certain persons were interviewed, the report should be clear on what they said and provide some degree of proof that the interview took place.

11. What about the clear consistency of the report? The report should also be consistent. In this one the parents at one point express fear that the subject will abide by the conditions of bond, while at another they are urging for his release on free bond. The report itself paints the accused as a child who has been beyond parental control, absconding from school, running away from home to be employed among others as

a boda boda rider. There is nothing in the report to show that the officer has analysed these circumstances and taken them into consideration in making her recommendations. If the parents who will be expected to avail the minor to court have expressed doubts as to his abiding by the bond terms, what makes it easy for the officer to recommend the free bond and the parents as the sureties? Even the alleged commitment by the chief is not documented. Hence the issue as to whether the accused is a flight risk if released on a free bond has not been settled.

12. In addition, the offence was committed in Nakuru County. The Probation Officer is recommending that the accused be granted free bond after which he will relocate to Uasin Gishu, yet she has not obtained any information about the accused from the Probation officer Uasin Gishu. The recommendation for the accused to be released on the supervision of the chief is very good but it would necessarily require the support of the Probation Officer in whose jurisdiction the accused would be staying.

13. Considering the seriousness of the offence a release on free bond would require some information about the accused's home environment in Uasin Gishu by Probation and After Care Services. This is necessary to support the recommendation that if released to his home village in Uasin Gishu on a free bond he will attend court.

14. In the circumstances, pending a Further Probation Report on the issue of free bond, the accused may be released on bond of Kshs. 200,000 with a surety of similar amount.

15. With respect to the recommendation on free bond, the Probation Officer to file a further report with the following;

- 1) *A letter of commitment from the chief on the issue of supervision.*
- 2) *A report from the Probation Officer Uasin Gishu from the accused's home area.*
- 3) *Admission records for the accused from the school where he attended from Class 1 as per the Pre Bail Report.*

16. These orders be served on the Probation & After Care Services for compliance.

Dated, Delivered and Signed this 23rd day of February, 2022.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

For accused: Ms. Mugweru

For state: Ms. Murunga

Accused: Present