



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER E008 OF 2022

REPUBLIC ODPP

VS

NELSON KIPRONO TANGUS alias GEOFFREYACCUSED

R U L I N G

1. The accused person was charged with **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 17th July, 2021 at Kirobon Area in Rongai Sub County within Nakuru County he murdered Lucy Rotich.

2. He took plea on 8th February 2022 and pleaded not guilty. Bond was granted and Kshs. 300,000/= was granted pursuant to **Article 49 (1) (h) of the Constitution. Rights of arrested persons**

(1) An arrested person has the right—

to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

3. I sought a Bail Assessment Report to enable court determine whether the amount may be excessive, this in view of **Section 123A of the Criminal Procedure Code**

Exception to right to bail

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.

4. The report was filed by Probation and After Care Services Nakuru on 16th March 2022. It is clear from the report that the immediate family of the accused person does not have the capacity to raise the bond terms granted, secondly they are fearful, because he has lived most of his life away from home, that they cannot guarantee his attendance to court as and when required pending the hearing and determination of

this case.

5. However the Probation and After Care Services (PACs) Officer recommends a family conference, where the accused person can have time with the family and reconnect and perhaps thereafter they will stand surety for him.
6. Secondly one of the witnesses requested that the accused be restrained from visiting the victims home should he be released on bond. From the foregoing, it is evident that the bond terms of Kshs. 300,000/= with surety of similar amount is excessive.
7. Bond is not meant to act like a sentence before trial but a means by which the court secured the attendance of the accused to his trial the Court is empowered to.
8. In that case, bond is reviewed to Kshs. 150,000/= with surety of similar amount. Pursuant to the witnesses expressed fears, the accused is restrained from visiting the victim's home during the pendency of this matter.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MARCH, 2022.

MUMBUA T MATHEKA

JUDGE

In the presence of:

C/A Edna

For state: Mr. Kihara

For Accused: Mr. Ooga

Accused: present