

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. E007 OF 2020

REPUBLIC.....PROSECUTION

-VERSUS-

FRANCIS VAATI MWANIA.....ACCUSED

RULING

1. The accused person **Francis Vaati Mwanja** who stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) has orally asked to be released on bond/bail on reasonable terms through his counsel Mr. Kioko.

2. The State through Prosecuting Counsel Ms. Gakumu do not oppose the release of the accused person on bail/bond as they have not received any adverse report, but the Prosecuting Counsel has asked that the terms of bail be commensurate with the nature of the offence charged.

3. Under Article 49(1) (h) of the Constitution of Kenya 2010, every arrested person has a right to be released on bond/bail on reasonable terms. The said Article provides as follows –

“49(1) An arrested person has the right –

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

4. Courts have held that the primary responsibility of demonstrating compelling reasons for denial of bond or bail rests with the prosecution. Courts have also taken into account other factors that have come into their knowledge from any other persuasive sources like Probation Officer’s reports in determining whether or not to grant bail.

5. In the present case, the prosecution has no objection to the accused person being released on bond bail. On my part from the information availed to the court at this stage, I find no compelling reason to deny the accused person release on bond or bail.

6. I thus allow the application of the accused and order as follows:-

1) The accused herein Francis Vaati Mwanja may be released on signing his own bond of Kshs.100,000/= with one surety of similar amount.

2) In the alternative he may be released on payment of cash bail of Kshs.200,000/=.

3) He will not interfere with prosecution witnesses.

4) He will attend every mention and the hearing of the case until it is finalized.

Delivered, signed & dated this 11th day of February, 2021, in open court at Makueni.

GEORGE DULU

JUDGE