



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRC NO.E006 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

GODFREY KIMOTHO MUTIKU.....ACCUSED

RULING

1. The accused person herein stands charged with murder contrary to section 203 as read with section 204 of the Penal Code and his trial is yet to begin.

2. In the meantime, defence counsel Mr. Kioko holding brief for Ms. Kyumwa has asked orally that the accused be released on favourable bond/bail terms and Ms. Gakumu for the Director of Public Prosecutions does not oppose the request for bail, as the Director of Public Prosecutions (DPP) has not received any adverse report on the accused person. Ms. Gakumu however, urges this court to grant bond/bail terms that are commensurate with the offence.

3. Under Article 49(1) (h) of the Constitution of Kenya 2010, every arrested person has a right to be released on bond or bail, irrespective of the offence charged provided there are no compelling reasons for denial of bond/bail. The Article specifically provides as follows –

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

(h) 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 is on the prosecution. Courts have also considered any other relevant factors coming to the attention of the court from other sources, in determining whether there exist compelling reasons to deny grant of bond or bail.

5. In the present case, the Prosecution do not have any compelling reasons to oppose the grant of bond or bail to the accused person. The court has also not come across any compelling reasons that would justify denial of bond or bail. I will thus allow the request for bond or bail.

6. In granting the accused herein bond or bail, I note that the Prosecution has urged the court to give conditions that are commensurate with the offence. The Prosecution has however not suggested any specific conditions.

7. Thus, doing the best I can and considering the circumstances of the case and the facts put before me, I allow the application and order as follows –

1) The accused person will be released on his signing his own bond of Kshs.200,000/= with one surety of similar amount.

2) In the alternative, he will be released on payment of cash bail of Kshs. 100,000/=.

3) He will not interfere with Prosecution witnesses.

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

Dated Signed & Delivered, this 24th day of March 2021, in open court at Makueni.

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GEORGE DULU

JUDGE