



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HCCRC NO 23 OF 2020**

**REPUBLIC.....PROSECUTION**

**-VERSUS-**

**ROBERT MUEMA NYAMAI.....ACCUSED**

**RULING ON BAIL**

1. The accused person herein, who stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, has applied orally through defence counsel applied for bail pending trial.
2. In this regard, the court asked for a pre-bail report to be filed, and the same was filed on 17/2/2021 prepared and signed by S. M. Munyasya – Probation Officer Makueni.
3. Subsequent to receipt of the report, the Prosecution counsel Mr. Kihara, pointed out that the pre-bail report was not favourable. The defence counsel Mr. Mathuva however, urged the court to release the accused person on bail provided sufficient conditions to keep the peace were imposed by the court as the issue is a family matter.
4. Under Article 49(1) (h) of the Constitution of Kenya 2010, every arrested person has a right to be released on bond or bail provided that there are no compelling reasons for denial of same. In particular, the Constitution provides as follows –

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

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

5. Thus the accused person herein, though he is charged with the serious offence of murder, is entitled to be released on bond or bail.
6. In considering applications for bail, courts have held that the primary responsibility of demonstrating the compelling reasons for denial of bail lies with the State. Courts have also considered other information coming to its knowledge to determine whether there are compelling reasons for denial of bail.
7. In the present case, from the pre-bail report filed, it is clear that the deceased is the father of the accused. The accused has lived with the mother who was separated from the father years ago. I note that all family members and the local administration are not comfortable with the accused being released on bail due to his demonstrated previous show of threats to violence and on allegations that he consumes bhang and local brew and becomes violent when drunk. Only the mother of the accused who is a poor peasant and not capable of controlling the activities and the life of the accused, as he has adopted bad habits from peers, supports his release on bail.
8. In my view, the State has demonstrated sufficient reasons for denial of bond or bail for the accused herein in order to protect him and to protect the community. He also appears to be a person of no known fixed abode as he is not married and the mother, though genuinely concerned about him, has lost control for him due to peer pressure.
9. I thus decline the request of the accused to be released on bond or bail. The application of the accused for bond or bail is thus dismissed.

**DATED SIGNED & DELIVERED, THIS 20<sup>TH</sup> DAY OF APRIL 2021, IN OPEN COURT AT MAKUENI.**

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**GEORGE DULU**

**JUDGE**