



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER E022 OF 2021

REPUBLICPROSECUTOR

VERSUS

CALEB KIPROP KIRUIACCUSED

R U L I N G

1. The subject herein (I will give him the benefit of doubt until his age is determined) herein is charged with **Murder Contrary to Section 203 as read with Section 205 of the Penal Code.**
2. It is alleged that on 6th May 2021 he murdered John Kipyegon Mitei at Kipkures Farm in Kuresoi North Sub County within Nakuru County. There was no objection to bond.
3. A Pre Bail Report availed by Probation and After Care Services Nakuru indicated that it was still too early for the victims to discuss the issue of bail, as the incident was too fresh for them.
4. The family of the subject stated that efforts to speak to the victim's family were rebutted, and therefore the traditional rituals expected and required after such an incident had not been performed.
5. The family of the subject was aware of hostility towards the subject and the idea of relocating him to another area was floated to them but they did not have any alternative residence at the time of the interview.
6. The subject was assessed not to be of any flight risk and does not have previous records.
7. The Pre Bail Report indicated that he was born in 2003 but the Prosecution had an age assessment report that showed that he is over eighteen (18) years. The Psychiatrist who examined his mental status for purposes of standing trial indicated that he was seventeen (17) years at the time of examination. **Section 143 of the Children Act** speaks to the ascertainment of the age of a person who is brought before court for a purpose other than giving evidence;

Presumption and determination of age

(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that such person is under eighteen years of age, the Court shall make due inquiry as to the age of that person and for that purpose shall take such evidence, including medical evidence, as it may require, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act and of all proceedings thereunder, be deemed to be the true age of the person.

(2) A certificate purporting to be signed by a medical practitioner as to the age of a person under eighteen years of age shall be evidence thereof and shall be receivable by a court without proof of signature unless the court otherwise directs.

8. The age stated by the Psychiatrist was not as a result of an age assessment. It is evident it was part of the subject's history.
9. Counsel for the subject told the court that his parent was going to avail documentary evidence of his age at the next mention date hence at the time of this Ruling the age issue had not been resolved.
10. It is important to determine the age of the subject because of the rights & protections that come with being a child in contact with the law. In the meantime:

- a. Taking into consideration that the family of the subject is willing to stand surety for him and to ensure that he comes to court; he may be released on bond of Kshs. 100,000/= with a Surety of Similar amount. Should the alleged hostilities be still in place, the parents are to find him an alternative safe place to stay in the meantime.
- b. The Probation Officer be and is hereby directed to follow up on the issue of the alleged hostilities and file a report in court in three (3) months from the date hereof.
- c. The Deputy Registrar to ensure that the order is served on the Probation and After Care Officer Nakuru County for compliance.
- d. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA ZOOM THIS 30TH JUNE 2021

MUMBUA T. MATHEKA

JUDGE

In the presence of:-

Court Assistant Edna

Ms. Murunga for state

Subject present virtually

Counsel for the subject N/A