

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL CASE NO. E0011 OF 2021

SIMON NDWIGA NYAGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The accused herein faces one count of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that on 5.03.2021 at Kangondo village, Kirimara location in Mwea West sub-county within Kirinyaga County, unlawfully murdered Ejidio Murage Nyaga.

2. The accused was arraigned before this court and he pleaded not guilty to the charge and a plea of not guilty entered. The defense proceeded to file an application for bail pending hearing. However, I noted that there are two applications on record one dated 1.04.2021 filed on behalf of the accused by the firm of Bwonwonga & Company Advocates and the other one dated 12.04.2021 filed on behalf of the accused by the firm of R. Muthike Makworo & company Advocates.

3. When the application came up for hearing, Ms. Ndung'u holding brief for Mrs. Makworo for the accused/applicant submitted that what was coming up for hearing was the application dated 10.04.2021 though according to the record, the application filed by the firm of R. Muthike Makworo & Co. Advocates is dated 12/04/2021. She relied on the affidavit in support of the said application and the probation officer's report to justify the prayer for bail/bond. I will therefore proceed to determine the application dated 12/04/2021. In doing so the question which I will seek to answer is whether the accused/ applicant herein ought to be admitted to bail/ bond.

4. Article 49(1)(h) of the Constitution provides that an arrested person has a 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*. This, therefore, means that the right to bail/bond pending trial is a constitutional right and which can only be limited if the prosecution satisfies the court that there are compelling grounds to warrant its denial to an accused person. In **Republic v Francis Kimathi [2017] eKLR**, the court held that compelling reasons should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail and that flimsy reasons will not therefore do. The court further held that the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution.

5. Some of the compelling reasons include the likelihood that the accused will fail to attend court; commit or abet the commission of, a serious offence; endanger the safety of victims, individuals or the public; interfere with witnesses or evidence; endanger national security or public safety; and where it is necessary for the protection of the accused (See **Michael Juma Oyamo & another -vs- Republic [2019] eKLR**). The prosecution bears the burden of proving to the required standard that in any case an accused person ought not to be admitted to bail pending hearing of a criminal case.

6. In the instant case, the prosecution did not file any affidavit or evidence as to the existence of any compelling reason(s) to justify the denial of bond/bail to the accused herein. The accused deposed that he is ready to abide by the conditions which this court might impose as prerequisite for the said bail/bond and further that he will not interfere with the witnesses. Further that he will attend court each and every time he is required to. These averments were never controverted by the prosecution. The probation officer's report further is positive.

7. As such, there having been no compelling reasons proffered by the prosecution to justify the denial of bail/bond to the accused/applicant herein, it is my considered view that the accused/applicant is entitled to bail or bond.

8. Accordingly, he is hereby released on bond of Kshs. 800,000/= with a similar amount or in the alternative cash bail of Kshs. 300,000/=.

9. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF JUNE, 2021.

L. NJUGUNA

JUDGE

.....for the Accused/Applicant

.....for the State