



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 68 OF 2019**

**REPUBLIC.....DPP**

**VERSUS**

**MELVIN MALUBI NANDWA.....ACCUSED**

**RULING**

This is for the application of the applicant/accused, **MELVIN MALUBI NANDWA**, dated 26.2.2020. The same application seeks that the accused be released on bond or cash bail on reasonable terms pending determination of his case. The application is supported by the affidavit of the applicant sworn on 26.2.2020.

In moving this application, Ms. Jepkorir, for the accused relied on the affidavit in support of the application, that the offence is bailable under the constitution of Kenya, and that there are no compelling reasons to deny him the right to bail. It was also submitted that he is presumed innocent till it is proved to the contrary. He pledged to abide by any conditions of bail that the court may set and that he will relocate to stay with his parents in Kakamega.

The state, through learned counsel, Mr. Naulikha, opposed this application. That the applicant and the deceased were husband and wife in an on and off relationship due to the violent conduct of the accused. That the deceased went back to the accused when 1 of their children passed on, only for the accused to kill her a day later. That the accused ran away to Kakamega with the body of the deceased to be discovered only later following foul smell from their room. That accused never reported the matter. It was submitted that the conduct of the accused confirms that he is a flight risk. Counsel urged that this application be dismissed.

I have considered the submissions of both the applicant and the Respondent/state. Under Article 49(1)(h).

“An arrested person has the 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.

The constitution therefore guarantees the right to bail to all persons irrespective of the charges that they are facing in court. The same constitution, however, has put a rider to the right to bail. That where it is shown exist any compelling reasons(s), then the right to bail may be denied. The Judiciary’s Bail and Bond Policy Guidelines gives general directions of what would constitute compelling reasons. At paragraph 4.9 of the guidelines, some of these considerations are mentioned as:-

- The nature of the charge and the seriousness of the punishment in case of conviction.
- The strength of the prosecution’s case.
- Character and antecedents of the accused person.
- Failure of the accused to observe terms of bail in the past.
- Likelihood of interfering with witnesses.
- Need to protect the victim.

- Relationship between the accused and the witnesses.
- Whether the accused is a flight risk.
- Protection of the accused.
- Public order, peace or security.

It must be confirmed that this list is in no way exhaustive and that each case would be handled on the issue of bail depending on its own circumstances. It must also be stated that in determining the suitability of placing the accused on bail the court must consider whether the accused, on bond, will turn up for his trial. In the celebrated case of ***Republic Versus Godfrey Madegwa and 6 others (2016)eKLR***, the Honourable Justice E. C. Mwita, held that the primary purpose for bail is to secure that accused person's attendance to court to answer the charge at the specified time i.e whether he is likely to attend trial.

I fully associate myself with this finding. I only add that bail is not a licence and or opportunity availed to an accused person to run away from the court and thereby avoid facing his accusers. So that if the court is convinced that the accused, on bail, is likely to abscond, then the court would rightly deny the accused the right to bail.

The prosecution has opposed this application on the ground that the accused is likely to abscond if released on bail. To determine if this is really the case, it is important to consider a number of facts that have come out in the affidavits and the submissions of the parties.

It is on record that the alleged offence took place on 27.9.2019. The deceased and the accused had been living together as husband and wife in their house. Immediately after the incident, the accused was nowhere to be seen. It was not until foul smell emanating from their house that the body of the deceased was discovered. The accused was then traced and arrested in Khwisero, Kakamega county, a fact he has conceded. There is no evidence on record to show if he ever reported this incident or at all.

I am convinced in the circumstances that the conduct of the accused of moving out of his house in Nairobi to the village in Kakamega County and failing to make any report, to anyone, about his wife (Deceased) or any incident in his house can only point to one fact. That he meant to avoid any arrest or investigations regarding the death of his wife. And this fact convinces this court that should the accused be released on bond, he is likely to abscond never to turn up in court for the hearing of his case.

In conclusion, I find that the prosecution has proved the existence of a compelling reason that justifies the denial of the right to bail to the accused. I therefore find no merit in the applicant's application dated 26.2.2020. I dismiss the same and order that the accused/applicant shall be remanded in custody pending determination of this case.

Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**23.6.2021.**

Court:

Ruling read out in open court (on-line) in the presence of the accused, Ms. Kinyori for the accused and Ms. Maina for the state.

**D. O. OGEMBO**

**JUDGE**

**23.6.2021.**