



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER E039 OF 2021

REPUBLIC ODPP

VERSUS

TNKSUBJECT

RULING ON BAIL

1. Seventeen (17) year old TNK is facing the charge of **Murder Contrary to Section 203 as read with 204 of the Penal Code**. It is alleged that on 12th August 2021 at around 0025 hours at [particulars withheld] Village, Gilgil Sub-County within Nakuru County he murdered NN, the four (4) year old child of his cousin.
2. He pleaded not guilty to the charge, and I requested for bail information from Probation and After Care Services to assist in determining his bail.
3. The report was filed on 2nd September 2021. It is stated by the Probation Officer that due to the prevailing circumstances in his family and community, it is in his interests that he remains in custody. According to the report, T parents separated when he was six (6) months old, and was raised by his paternal grandmother, and was under the custody of various paternal relations in his life.
4. At the time of his alleged committing this offence he was living with the grandmother of the deceased, after being expelled from school. T carries the profile of the child of a dysfunctional family as described by the Probation Officer, lived briefly with his father and step mother in Mombasa, moved to boarding school, where he was till class six (6), then to day school, earned 307 out of 500 Kenya Certificate of Primary Education (KCPE) Marks, went to Secondary School, expelled at form three (3) 2nd term, due to discipline issues, moved to another school, registered for form four (4), dropped out. He is described by the teacher as a “discipline case”, “attention seeking student”, sneaking out of school to buy drugs which he sold to other students, that at home he was involved with other boys who steal and do drugs. That he was anti-social, kept to himself, suspected drug user, disciplinary issues in the community and due to his temper, no close associates, would lock himself in the house, feared at home. His family can raise bail but is unwilling to bail him out.
5. I have carefully considered the report before me. It is not in doubt that the accused person has been a child in need of care and protection since his babyhood, rejected by his parents as an infant, and as a young boy, rejected by his own father.
6. It is noteworthy that the aspect of his life is not analysed by the Probation Officer, and neither is there an effect to demonstrate to the father that refusing to stand surety for his son does not auger well for him. Then I thought it is the duty of all of us in the child justice system to work together to rehabilitate and reintegrate children who fall off the straight and narrow before they get hardened by the system. I thought for a child as this one before me, facing a murder charge against his own niece, is a red flag for the system to not continue as usual but to propose ways and means of dealing with his welfare, even as we deal with the crime he has committed. That is what is required by **Section 187 of the Children Act**. Hence, as much as he may remain in custody he is still the responsibility of his parents and guardians as they cannot just drop their parental responsibilities for him.
7. It is necessary for arrangements to be made for him to sit for his Kenya Certificate of Secondary Examinations (KCSE).
8. It is necessary that his father be made aware of the legal position of his parental responsibility for the son. The report does not bring out his voice, and the Probation Officer and Counsel for the subject ought to engage him on his responsibilities.
9. Be that as it may, the accused may be released on bond of Kshs. 200,000/= with Surety of Similar Amount. He does not have to live in Gilgil, he can live with his father or other relatives in Mombasa, which is far from the community in Gilgil where he is at risk of being lynched.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF OCTOBER, 2021.

MUMBUA T. MATHEKA

JUDGE

In the presence of:

C/A Edna

Ms Murunga for state

Ms Githae for subject

Subject present virtually