



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 23 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

HENRY GITAU NJORGE.....ACCUSED

RULING

1. The accused prays for bail pending trial.
2. His learned counsel, *Mr. J. Kimani*, submitted that the accused is entitled to bail under **Article 49** as read with **Article 50** of the **Constitution**. He said that the accused is presumed innocent.
3. He argued further that the accused has no previous criminal record; that he is not a flight risk; and, will abide by all conditions set by the Court. Counsel also relied on the *pre-bail report* filed on 12th February 2020. In his opinion, it does not reveal any compelling reasons for denial of bail.
4. The victim's family was represented by *Mr. Mathenge*. He submitted that the family lives barely 200 metres from the home of the accused; and, that they have received threats from the latter. From the *pre-bail report* it is clear that there has been heightened hostility between the two families. Lastly, the victim's family expressed fears that the accused will interfere with witnesses.
5. The application is also *contested* by the Republic. Learned Prosecution Counsel, *Ms. R. Gichuru*, associated herself fully with the submissions made by *Mr. Mathenge*.
6. By dint of **Article 50** of the **Constitution**, the accused person enjoys the presumption *innocence*. Under **Article 49 (1) (h)** he is also entitled to bail pending trial *unless* there are *compelling* circumstances.
7. The overarching objective of bail is to ensure the accused *attends* his trial. ***Muraguri v Republic*** [1989] KLR 181.
8. Other relevant considerations include the nature of the charge; the likely sentence; previous criminal records; the *views* of the *family of the victim*; the possibility of *interference with witnesses*; the temptation to abscond; and, the safety of the accused.
9. The accused is charged for the felony of *murder*. The Director of Public Prosecutions informs the High Court that on 18th September 2019 at Kandani Sub-Location, Kahumbu Location, Murang'a South Sub-County of Murang'a County he murdered *Elizabeth Wanjiku Ngige*.
10. Those are mere *allegations* at this stage. From the standpoint of the accused's family and the local community, the *pre-bail report* is favourable. But it *down plays* the concerns of the victim's family. The **Victims Protection Act 2014** requires the views of victim's family to be taken into account at this stage. The family is strongly opposed to the release of the accused. There is understandable bitterness and angst for the loss of their relative.
11. The two families live only *200 metres* apart. The *pre-bail report* confirms that the hostility has escalated following the homicide. Close family members of the deceased are lined up as witnesses. I note for example that the *son* of the deceased, *James Thuku Ngige*, is listed as a witness on the reverse side of the *Information*. Granted the proximity of the home of the accused, I find that the interference with witnesses by the accused is not far-fetched. That is a *compelling* reason for denial of bail.
12. The upshot is that the application for bail is *refused*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 27th day of February 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

The accused.

Mr. J. Kimani for the accused.

Ms. R. Gichuru for the Republic.

Ms. Dorcas & Ms. Susan, Court Assistants.