

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO 14 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JAMES NDUNGU MUTAGAACCUSED

RULING ON BAIL

1. The Accused person in this case, **JAMES NDUNGU MUTAGA**, is charged with two counts of **murder** contrary to **sections 203 and 204** of the **Penal Code**. It is alleged in the information dated 30/07/2019 that in the night of 10th and 11th July, 2019 at Mwiyo Village in Laikipia–Central Sub-county of Laikipia County he murdered one **JANE NJOKI NYAMBURA** and one **ISAAC WAMAE**. He also faces in the same information a third count of **attempted suicide** contrary to **section 226 as read with section 36** of the **Penal Code**.

2. On 09/10/2019 the Accused pleaded not guilty to all 3 charges. A date for hearing of the case shall be given at delivery of this ruling. In the meantime the Accused has asserted his constitutional right to bail. The Republic has opposed by three affidavits – one sworn by the investigating officer of the case, another by the mother of the Deceased in count I (also grandmother to the Deceased in count II), and the third affidavit by the Chief of Lamuria Location, Laikipia-Central Sub-County, one Teresia W Mukundi. The affidavits were filed in court on 23/10/2019.

3. The Accused responded by a replying affidavit filed in court on 06/11/2019.

4. Bail pending trial is now a constitutional right for all criminal offences. It will be denied only for compelling reason; and any condition that the court might impose for such bail, again by constitutional edict, must be reasonable. For all that see **Article 49(1)(h)** of the **Constitution of Kenya, 2010**.

5. I have read the three affidavits filed by the Republic in opposition to bail, and also the Accused person's replying affidavit. I have also perused the witness statements and documentary evidence supplied by the prosecution to both the Accused and the court. I have noted, without compromising upon the Accused person's right to the presumption of innocence until proven guilty, the circumstances in which the alleged offences were committed and the aftermath.

6. The Deceased in count I was the Accused person's wife, while the Deceased in count II was his son. One of the main witnesses will be the mother of the Deceased in count I (who is also the grandmother of the Deceased in count II). Her home is only a short distance away from the Accused's home. Other witnesses are neighbours of the Accused at home.

7. It is common ground that the father of the Accused committed suicide sometime back by hanging himself. It is feared that there might be mental illness running in the Accused's paternal family.

8. From the material now before the court I am satisfied on a balance of probabilities that there are two compelling reasons to deny the Accused bail –

a) There is great likelihood of him interfering with some of the witnesses.

b) There is a grave probability of the Accused killing or otherwise harming himself.

9. In the circumstances, I will deny the Accused bail. He shall remain in custody in the duration of his trial. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 26TH DAY OF FEBRUARY, 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 27TH DAY OF FEBRUARY, 2020