



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 22 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

PETER KINUTHIA MUTHUI.....ACCUSED

RULING

1. The accused prays for bail pending trial.
2. His learned counsel, *Mr. Mbuthia*, submitted that the accused is an elderly man of 80 years. He argued that all the potential witnesses are adults who are unlikely to be swayed by the accused. He took up cudgels on the pre-bail report for quoting witnesses who were not interviewed by the probation officer.
3. Counsel submitted that notwithstanding the charge, the accused enjoyed the presumption of innocence; and, is entitled to bail. He conceded that the family is still hurting as a result of the homicide. But he was of the view that there are *no* compelling reasons for denial of bail.
4. The Director of Public Prosecutions opposed the application on the grounds that the deceased was the *wife* of the accused; and, that potential witnesses include her children and other relatives. Counsel also submitted that the accused is violent which militates against his release.
5. The overarching objective of bail is to ensure the accused *attends* trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
6. It is a truism that the accused is presumed *innocent*. Under **Articles 49 (1) (h)** and **50** of the **Constitution**, an accused person is entitled to bail *unless* there are *compelling* circumstances.
7. Other relevant matters to be considered by the court 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.
8. The **Victims Protection Act 2014** now requires that the views of victim's family be considered at this stage. In the instant case the homicide occurred inside the *nucleus* family. In the real sense, the family of the *accused* is also the *victim's* family.
9. The accused faces the grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on 10th August 2019 at Kandengeny village, Kahuro Sub-County within Murang'a County he murdered *Esther Njoki Kinuthia*.
10. Like I have stated, the deceased was the *wife* of the accused. The accused is polygamous but the other wife is also deceased. There are 15 children from both houses. The local administration opposes his release. While it is true, that he lives alone, some of the witnesses are his *children* and close family members. For instance, his youngest son, *James Ngonga*, is listed as a witness on the reverse side of the *Information*. The son does not object to his release if the accused can desist from alcohol and violent behaviour.
11. But some of the family members strenuously opposed his release. The pre-bail report indicates that the accused is prone to substance abuse and he can be violent. Despite the witnesses being adults, the likelihood of *interference* with their evidence is not far-fetched.
12. All those are *compelling* reasons for denial of bail. The upshot is that bail is *refused*. However, in view of the advanced *age* of the accused, I direct that the trial be *fast-tracked*.

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. N. Mbuthia for the accused.

Ms. R. Gichuru for the Republic.

Ms. Dorcas & Ms. Susan, Court Assistants.