



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 29 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

FESTUS WACHIRA MAINA.....ACCUSED

RULING

1. The accused prays for bail pending trial.
2. His learned counsel, *Mr. Maina*, submitted that the accused is presumed innocent. He said that the accused is a 4th year university student; and, that bail will afford him sufficient time and facilities to prepare for the case and pursue his degree. He opined that the pre-bail report discloses *no* compelling reasons for denial of bail.
3. The Director of Public Prosecutions opposed the application.
4. 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).
5. The accused is presumed *innocent*. Under **Article 49 (1) (h)** of the **Constitution**, he is entitled to bail *unless* there be *compelling* circumstances.
6. 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.
7. The **Victims Protection Act 2014** now requires that the views of victim's family be considered at this stage.
8. The accused faces the grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on the night of 3rd and 4th December 2019 at Kwa Maji Village, Kiangage Sub-Location, Mbiri Location, Murang'a East Sub-County within Murang'a County he murdered *Kingsley Ngige*.
9. From the *pre-bail report* dated 7th February 2020, the accused was having an affair with the mother of the deceased. Her relatives are bitter and strongly object to his release.
10. The pre-bail report is also *unfavourable* to the accused. The report indicates that there is palpable *anger* at the *locus in quo*; and, that the *safety* of the accused *cannot* be guaranteed. Although the accused states that he can relocate to his village, it is not lost on me that he has not completed his studies at Murang'a University. That would mean that he would still visit the *locus in quo* where the community has threatened to *lynch* him.
11. I thus find that there are strong and *compelling* reasons for denial of bail. Bail is *refused*. In the interests of justice, I direct that the trial shall be *fast-tracked*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 25th day of February 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

The accused.

Ms. Gichuru for the Republic.

Ms. Dorcas, Court Assistant.