



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL CASE NO. E 006 OF 2020

MARTIN MUGO SIMON.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

1. The accused is charged with the offence of murder allegedly committed on the 18/9/2020. He denied commission of the offence on the 1/10/2020 when a plea of not guilty was entered by the court and directed him to be remanded at Nyeri Prison pending hearing and determination of the case, scheduled for hearing on the 6/5/2021.

2. By an application dated 2/10/2020 the accused seeks an order to be released on reasonable bail terms citing ill health and old age, and his right to bail as stated under **Article 49(1)(h) of the Constitution**.

3. The applicant urges the court to consider, in its discretion free bond or cash bail of Kshs 30,000/-.

4. I have considered the applicant's supporting affidavit sworn on the 2/10/2020 by Advocate, Jane Njeri representing the accused. It is averred that the accused is not a flight risk and has co-operated with the Investigating Authority, is a Senior citizen who has lived in Kirinyaga County and a dedicated farmer and not a danger to the Society and therefore will not endanger the public in any manner.

5. The Learned Assistant Prosecution Counsel, Mr. Ashimosi told the court that the Investigating Officer has no compelling reasons to present to the court to urge denial of the bail/bond application.

6. I have considered the application and grounds in support of the same.

I am minded that an accused person has a right under **Article 49 of the Constitution** to be released on reasonable bail terms and that the prosecution has no compelling reasons to urge for denial of bail to the accused.

7. Before granting bail to an accused person, the court is obligated to consider the circumstances of the case. Section 123 of the Criminal Procedure Code states some of the circumstances which include;

- Nature of the offence.
- Character, antecedents, associations and community ties of the accused person,
- The defendant's record of the fulfilment of obligations under previous grants of bail, if any.

8. The court has the obligation to balance the accused's right to bail and the presumption of innocence and the interests of the Society/Community and the victim impact upon which it will exercise its discretion to allow or reject the bail application. The above can only be achieved if a Pre-bail Probation Officer's report is presented to the court from which it would make an Informed decision.

9. For the above reasons, I direct that the County Probation Officer's move with speed to prepare a pre-bail report and file the same within 21 days. The case shall be mentioned on the 15/12/2020 for further orders on the bail application. Production Order to Issue.

Orders accordingly.

Dated, Signed and Delivered at Kerugoya this 18th day of November 2020.

J. N. MULWA

JUDGE