



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 39 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KINYANJUI WAINAINA alias DENOH.....ACCUSED

RULING

Daniel Kinyanjui Wainaina alias Denoh is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The offence is alleged to have occurred between the night of 30th September and 1st October 2020.

On 19th October 2020 the Accused pleaded not guilty to that offence and is now awaiting his trial, before this court, which trial shall be on 2nd and 3rd June 2021.

The Accused by a Notice of Motion application dated 19th October 2020 seeks an order that he be released on bond or bail on reasonable terms.

The state did not oppose the application but added a rider by stating that the state would apply for cancellation of bail if the Accused violated the terms of bail.

There is a favourable probation report. The report shows that the Accused is a married man and that marriage is blessed with four children. That family is dependent on the Accused as the sole bread winner.

The Accused before court, just like any other Accused person is presumed innocent until proven guilty. The Constitution under Article 49 (1) (h) provides that an Accused has a right to be released on bond or bail on reasonable conditions unless there are compelling reasons not to be released. The terms of bond or bail should be to secure the attendance of the Accused for his trial. Bond or bail cannot be granted where there is the risk of flight and failure to attend trial. This was made clear in the case **Kelly Kases Bunjika -v- Republic (2017) e KLR** where Justice Muriithi Stated:

“It is clear that the primary consideration for bail is whether the Accused will attend his trial for the charge facing him, and it must, therefore, be a compelling reason if it is demonstrated that the Accused person is likely to fail to attend court proceedings.”

There is no evidence adduced by the state or revealed by the probation officer which shows that there are compelling reasons why bond or bail should not be granted to the Accused. The Accused is gainfully employed as an administration police officer.

In view of the above I am of the view that the Accused be released on bail pending trial but there is need, as I note in the probation report, for there to be terms maintained by the Accused to ensure the integrity of the trial.

CONCLUSION

I make the following order:

- (a) The Accused shall be released on a bond of Ksh. 1 million (Kenya shillings one million) with one surety of the like sum.**
- (b) The Accused shall keep off Riverside Bar and Kiambu town, except when he is attending this case.**

(c) The Accused shall not threaten, harm or interfere with this case or the witnesses and shall attend court when required to.

ORDERS ACCORDINGLY.

SIGNED AND DELIVERED VIRTUALLY THIS 17th DAY OF NOVEMBER 2020.

MARY KASANGO

JUDGE

17th November 2020

Before Justice Mary Kasango

C/A - Kevin

Accused: Daniel Kinyanjui Wainaina alias Denoh – Present

For Accused – M. Njehu

For the State – Ms Christine Kathambi

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE