



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 15 OF 2020

FRANCIS WANYORO MBURU.....ACCUSED/APPLICANT

VERSUS

REPUBLIC..... PROSECUTOR

R U L I N G

1. **Francis Wanyoro Mburu** is charged with the offence of murder contrary to Section 2032 as read with Section 204 of the Penal Code. He pleaded not guilty and is now awaiting trial. He has applied by his application of Notice of Motion dated 10th November 2020 that he be granted bail pending trial.

2. A pre-trial probation report has been availed to the court. It shows that the Accused comes from a large family of ten siblings. The Accused did not advance in education beyond class 8 which was due to the financial challenge of his parents. Prior to his arrest for the present offence the Accused was working as a casual Labourer in Mwea area. He has married but separated with his spouse in the year 2016. That union was blessed with one child. He consumes alcohol and at his own admission he was heavily intoxicated when the alleged offence was committed.

3. It is important to note that the Accused is charged with the offence of murder of his brother **Thomas Kaigo Mburu (deceased)**. Consequently, there is, understandably, tension amongst family member which is directed towards the Accused. The family is against the Accused being granted bail. Similarly, Members of the public, are bitter over the offence, the subject of this case, and there is the threat to the wellbeing of the Accused as result of that bitterness.

4. Because of the sentiments of the Accused family and the members of the public and because it is feared by them that the Accused may interfere with witnesses in my view that is a compelling reason to deny the Accused bail. A case in point of when the balance of denying an Accused person tilts in its denial is the case **Republic –vs- Diana Suleiman Said and Another (2014) e KLR** this:

“14. The Supreme Court of India in the *Deokar* case cited its previous decision in *Masroor v. State of Uttah Pradesh and Anor.* 2009) (14) SCC 286 as follows:

“*There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.*”

15. I consider that the principles generally of the accused’s ability or propensity to interfere with the due administration of justice having regard to the circumstances of the case and the considerations of the society or public interest are matters to be considered in considering a review of bail. See also **Aboud Rogo Mohamed & Another v. R**, Nairobi HCCR.C. No. 793 of 2010 and **The Defence Forces Council & 6 Others v. Gabriel Kirigha Chawana & 26 Others**, Court of Appeal Civil Application No. 9 of 2014.”

5. **In view of the above the application dated 10th November 2020 for bail pending hearing and determination of this case is declined. It is dismissed.**

SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2020.

MARY KASANGO

JUDGE

18th December 2020

Before Justice Mary Kasango

C/A - Kevin

Accused - Present

For Accused - Mr. Gikenye holding brief for Mr. Olaka

For the State - Mr. Kasyoka

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE