



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 43 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

FREDRICK NDUKU KAMAU.....ACCUSED

RULING

1. **Fredrick Nduku Kamau** is charged with the offence of **Murder** contrary to Section 203 as read with Section 204 of the Penal Code. He pleaded not guilty and is now awaiting trial.

2. The Accused is a 28-year-old man. Prior to being charged with the present offence he was working with the **Kenya Defence Forces** for four years.

3. The state does not oppose the application for bail save that the state requests that the Accused do reside outside Githunguri area pending his trial.

4. Article 49(1) (h) of the Constitution provides that any person charged with a criminal offence has a right to be released on bail pending trial unless there are compelling reasons for the court to decline to grant bail. What is a compelling reason was considered in the case **Simindei Naurori and Another -v- Republic (2016) e KLR** thus:

“The **Constitution** does not define what constitutes “**compelling reasons**”. However, courts have rendered decisions that articulate what constitutes compelling reasons and include the following: **the nature of the charge, the seriousness of the punishment, the strength of the prosecution case, the character and antecedents of the accused, the failure of the accused to honour bail terms previously granted, the likelihood that the Accused will fail to attend court during trial, the likelihood of interfering with witnesses, the need to protect the victim of crime and the accused person, the relationship between the accused and potential witnesses, the age of the accused, the flight risk, whether the accused person is gainfully employed, public order, peace and security imperatives.** (See **ALHAJI MUJAHID DUKUBO-ASARIN Vs. FEDERAL REPUBLIC OF NIGERIA S.C. 20A/2006**).

It is useful to refer to the case **Republic v Fredrick Ole Leliman & 4 others [2016] eKLR** which the learned judge had cited to her in the case **Ahmed Mohammed Omar & 6 Others [2010] eKLR**, where Ochieng, J. relied on the following quotation from the above case of **Farriss C. J in Rex Vs. Hawken (1944) 2 DLR 116**:

"The question of bail is sometimes misunderstood. When a man is accused he is nevertheless still presumed to be innocent and the object of keeping him in custody prior to trial is not on the theory that he is guilty but on the necessity of having him available for trial. It is proper that bail should be granted when the Judge is satisfied that the bail will ensure the accused appearing at his trial."

5. There are no compelling reasons to deny the Accused bail pending trial because he is to presumed as innocent until conviction. Accordingly, I grant the following orders:

(a) The Accused shall be released pending trial on bond of KSh. 500,000 plus two sureties of similar amount,

OR

(b) The Accused may be released upon payment of cash bail of Ksh. 500,000.

(c) The bail granted hereof is conditional on the Accused not residing or visiting Githunguri area of Kiambu County while the trial is yet to be concluded and is also conditional on Accused residing with his parents at Loitoktok.

(d) The bail is also on condition the Accused shall not interfere with the prosecution witnesses.

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

MARY KASANGO

JUDGE

18th December 2020

Before Justice Mary Kasango

C/A: - Kevin

Accused: **Fredrick Nducu Kamau** - Present

For Accused - Miss Kimani

For the State - Mr. Kasyoka

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE