

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 55 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PAUL MIANO MUTHONI.....ACCUSED

RULING

The accused, Paul Miano Muthoni, is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged in the particulars of the offence that on the 13th day of October, 2017 at Lunga Lunga Slums within Industrial Area the accused murdered Grace Muthoni Kinyanjui. The accused has denied committing this offence. He has applied to be admitted to bail pending the hearing and determination of this case. In the Notice of Motion dated 2nd July 2018 and filed on 3rd August 2018 the accused states that he is the sole bread winner with young children who depend on him; that he has a constitutional right to be admitted to bail on reasonable terms and conditions; that he is presumed innocent until the contrary is proved; that he will abide by the terms and conditions of bail that this court will give and that he will not interfere with witnesses.

The application is not opposed by the prosecution. However, the Learned Prosecution Counsel asked the court to call for a pre-bail report from the Probation Officer. This application was allowed and a report has been filed. I have read the report. It does not identify the residence of the accused. The report refers to him as a former residence of Lunga Lunga where he worked as a casual labourer. There is no indication that the accused is a person of fixed abode and the accused does not state so in his affidavit in support of the application for bail. I have also noted that the family of the deceased does not vouch for him in respect to securing his release. There is no indication that they are willing to stand surety for him.

I have also noted that the accused describes himself as the sole bread winner to his young children who depend on him. There is no indication in the report on in the affidavit by the accused that he has children. The information contained in the report show that the accused was living with the deceased but they had no children although the deceased had children who now live with their biological father. The latter is described in the report as the report as the first husband of the deceased.

Although the prosecution is not opposed to bail and having taken into account that bail is a constitutional right unless compelling reasons exist, it is my view that the social circumstances of the accused persuade me that he is not fit to be admitted to bail. His place of abode is not known. There is no indication that he is in gainful employment for this court to trace him to a confirmed place of work and that his family cannot vouch for him and are not willing to stand surety for him. I have considered that the paramount consideration in granting bail is whether the accused shall attend court when required to do so until the case is fully determined. In my view I harbor some misgivings regarding securing accused's attendance to court considering that he does not seem to have a willing surety. I note that this case is fixed for hearing on 17th, 18th and 19th June 2019. Having considered all the applicable principles in granting or denying bail it is my view that this is not a good case to grant this application. I therefore decline to grant this application and admit the accused to bail. I order that the accused shall remain in custody pending the hearing and determination of this case. If the circumstances facing the accused were to change, for instance if this court were to be satisfied that the accused has secured an acceptable surety acceptable and secure fixed abode, then this court may re-consider this application. Orders shall issue accordingly.

Delivered, dated and signed this 27th day of March 2019.

S. N. Mutuku

Judge