

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 2 OF 2019

JARED ONDIEKI BASWETI.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Accused herein is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. He has applied for bail and pledged in his supporting affidavits, to attend court as required and not to "harm" or interfere with the witnesses, some of whom are his close family members, who at any rate he says need him as their father and spouse. He asserts that that upon release, he will return to his ancestral home at Kerenda village, Nyangoge, Nyamira County to reside in his mother's homestead.
2. An affidavit opposing his release on bail was sworn by the Investigating Officer CPL. John Mutisya. His key fears are that the Accused might abscond and the likelihood that he will interfere with witnesses principally, his wife and a minor daughter.
3. Article 49(1) (h) of the Constitution provides that an accused person is entitled to be released on bail or bond on reasonable conditions unless there be shown compelling reasons militating against such release. The primary consideration in granting bail is whether the Accused person will attend his trial. See **Job Kenyanya Musoni v R [2012] e KLR**. Even so, other factors are relevant, including the nature of the charges; strength of the evidence supporting the charge; gravity of the punishment prescribed for the offence; previous criminal record; likelihood of interfering with witnesses; likelihood of further charges and public safety or the Accused person's own safety. See **R v Danson Mgunya & Another (2008) e KLR**. The duty lies with the DPP to present cogent evidence why bail should be declined. Moreover, the Accused person is presumed innocent until proven guilty.
4. The two reasons cited by the prosecution in this case in opposing bail relate to the likelihood of interference with prosecution witnesses, who are related to the Accused person, and the likelihood, based on the fact that the Accused has no known place of permanent residence, of absconding.
5. There is no tangible evidence to support the second objection. At any rate, the pre-bail report indicates the rural home of the Accused person and there is no reason to suppose that the Accused will not return there as he has pledged. Besides, the court can give stringent conditions to secure his attendance.
6. Of more concern, in my view, is the first objection, relating to interference with key witnesses. Admittedly his wife and a minor daughter are key prosecution witnesses, based on their depositions in the committal bundle. The deceased was a son to his wife and a step-son to the Accused. In light of this matrix of relationships, it is important to consider carefully whether there is a likelihood of interference, and as stated in **Mgunya's case**, the standard of proof of compelling reasons is on a balance of probabilities. (see also **R v Mohamed Ahmed Omar (2010) e KLR**). I am persuaded that with regard to his wife and daughter the likelihood of interference is probable in this case.
7. All considered, I think that the most prudent course to take in this case is to grant the Accused bond in the sum of KShs.400,000/= [FOUR HUNDRED THOUSAND] and two like sureties. However, bail terms will remain suspended pending the testimony of the Accused's wife **NKO** and minor daughter **DK**. For the avoidance of doubt, the bail terms will come into effect once the two stated witnesses have testified. Upon being released on bond, the Accused person will be required to report to the Deputy Registrar of this court once a month on Thursdays, without fail.

DELIVERED AND SIGNED AT KIAMBU THIS 23RD DAY OF MAY 2019

.....

C. MEOLI

JUDGE

In the presence of:

Mr. Mokua holding brief for Miss Ndombi for DPP

Mr. Muriuki holding brief for Mr. Mathenge for Accused

Accused – Present

