



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**IN NAIROBI**

**CRIMINAL CASE NO. 60 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**TITUS MULI MUNYAO.....ACCUSED**

**RULING**

1. Titus Muli Munyao the accused in this case is charged with the murder of Mary Ndinda Mbithi that is alleged to have occurred on 4<sup>th</sup>/5<sup>th</sup> November 2018. The accused has pleaded not guilty to the charge. Pending the hearing and determination of this case, the accused, through his lawyer Ms. Ruth C. Ajiambo, learned counsel, has applied to be admitted to bond/bail on reasonable terms. The application was argued orally. This court has called for a pre-bail report from the probation officer on the social and personal circumstances of the accused.

2. It was submitted that the accused is a young person aged 27 years and has two young children who are now being taken care of by their maternal grandparents following the death of their mother the deceased in this case. Court was told that the accused does not have previous criminal records and is ready and willing to abide by the bond terms and conditions. It was submitted that the accused will not interfere with the witnesses and that he pleads to be released so that he can fend for his children. Court was told that the accused comes from humble background and that his father is deceased and the mother ekes out a living through subsistence farming.

3. The application is opposed. The prosecution counsel relied on the affidavit of CPL Kenneth Okello sworn on 11<sup>th</sup> June 2019 and filed on the same date. The gist of submissions by the prosecution in opposing this application and basing those submissions on the said affidavit is that the offence was calculated and planned; that all civilian witnesses are neighbours of the accused and there is likelihood that he will interfere with them or influence their evidence; that the accused has no fixed abode; that the family of the deceased fear for their lives if the accused is released; that the prosecution has overwhelming evidence against the accused and that the accused should not be released for his personal safety because the family of the deceased is very bitter and may take revenge on him.

4. I have considered this application and rival submissions. I have also read the report of the probation officer. Other than the family of the deceased stating that they fear for their lives if the accused were to be released on bond there is nothing else that seems adverse against the accused. I have considered the deposition of CPL Okello, I find it rather contradictory that the family of the deceased should express fear for their lives if the accused is released and at the same time indicate that the accused's safety cannot be guaranteed because the family of the deceased may take revenge on him.

5. I have considered submission that the evidence against the accused is overwhelming. This may be so but that evidence is yet to be presented in court. While I do not downplay the grounds relied on by the prosecution in opposing this application I am alive that it is trite that the paramount consideration in a bail application is that the accused will present himself in court during the hearing of his case until it is fully determined. There is no evidence adduced to show that the accused will not present himself in court although it is alleged that he might abscond because of the strong evidence against him. I therefore do not find the grounds in opposition compelling to make me deny the accused bail.

6. I will allow the application and release the accused on bond, which I hereby do, on the following terms:

**(a) He shall be released upon executing a bond of Kenya Shillings One Million (Kshs. 1,000,000) with one surety of similar amount.**

**(b) In the alternative the accused shall be released upon payment of Kenya Shillings Five Hundred Thousand (Kshs. 500,000) as cash bail.**

**(c) He shall attend court at all times when required.**

**(d) He shall not do anything including intimidating, interfering or threatening witnesses that might compromise the fair trial in this case.**

**(e) He shall not live in the same locality with the family of the deceased during the pendency of this case.**

7. This case shall be mentioned before Court No. 1 (Lesiit J.) on a date to be agreed by the parties in court for allocation of hearing dates and any further directions.

8. Orders shall issue accordingly.

**Dated, signed and delivered this 20<sup>th</sup> June 2019.**

**S. N. Mutuku**

**Judge**