

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 25 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KABACHIA MUTURI.....ACCUSED

RULING

John Kabachia Muturi, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is stated in the particulars of the offence that the accused murdered Jane Muringi Kariuki, the deceased, on 7th day of April 2019 at Kariobangi South in Njiru Sub-County within Nairobi County. The accused pleaded not guilty to this charge.

Through his lawyer, Mrs. Omung'ala, the accused has approached this court seeking to be admitted to bail pending the hearing and determination of this case. Through an oral application and submissions this court was told that the accused has a fixed abode in Mukurueni Nyeri where his parents live and that he has a job in Nairobi. It was submitted that the accused's passport together with accused's other personal documents are in the custody of the police. It was further submitted that the accused takes care of his parents and siblings as well as taking care of orphans in Mukurueni Nyeri.

In an affidavit filed on 12th June 2019, the prosecution states that the accused knows the witnesses in this case because they reside in the same area and therefore there is likelihood of his interfering with them. It was also stated that the accused fled from lawful custody after his arrest and therefore there is likelihood of him absconding. To this point the defence submitted that the accused did not flee from lawful custody but was released by the police pending investigations and was later re-arrested.

This court called for a pre-bail report from the Probation Officer. The report was filed on 13th June 2019. I have read the report. The family of the accused is supportive of him but the family of the deceased exhibited desire to have the accused remain in custody.

Bail is a right that can be limited where compelling reasons exist. I have considered this application. I appreciate the fear expressed by the prosecution to the effect that the accused, if released on bond, may interfere with witnesses. I have also considered the fear expressed by the prosecution that the accused may abscond. It does not come out clearly whether indeed the accused escaped from lawful custody. It is my finding therefore that the prosecution has failed to provide compelling reasons to warrant denial of bond to the accused person. I hereby do grant the application and admit the accused to bail on the following terms and conditions:

- a) That the accused shall execute a bond of eight hundred thousand shillings (Ksh 800,000) with one surety of that amount.**
- b) That the accused shall, in the alternative, deposit with the Registrar of this court cash bail in the sum of three hundred thousand (Kshs 300,000).**
- c) That the accused is cautioned against approaching or in any other manner contacting the witnesses or doing anything that may jeopardize this trial.**

Orders shall issue accordingly.

Dated, signed and delivered this 26th September 2019.

S. N. Mutuku

Judge