



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL CASE NO. 2 OF 2017

REPUBLICPROSECUTOR

VERSUS

DANIEL OYONDI MOI.....ACCUSED

RULING

The accused person herein Daniel Oyondi Moi faces a charge of murder contrary to section 203 as read with section 204 of the Penal code.

It is alleged that on the 29th Day April 2017 at Kiawara Village within Mweiga Township Kieni West Subcounty within Nyeri County murdered Reginah Kiinyu.

He was arraigned in court on the 8th May 2017 and took plea on 18th May 2017.

He applied for bond/bail pending trial.

I issued an order for a Pre-bail report. The report was prepared by the Probation office, Butere/Mumias and filed on 11th December 2017 by the Probation office Nyeri.

Article 49(1)(h) of the Constitution provides bail as one of the rights of an accused person '*to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released*'.

The prosecution had no objection to the application for bail.

Section 123A of the Criminal Procedure Code sets out the considerations to be made in making an order for bond.

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.

A perusal of the PBR, which is a social inquiry report on the accused person, reveals that the accused person hails from Ebushirikha village, Emuruba sub location, Kisa North Location, Emasasti Division, Khwisero District. For the last four years he has been a farm hand for one Samuel Muhoro. Both his parents are deceased, and his wife left three years ago.

However, his family, his eldest brother, one Shadrack Omende indicated that the family was ready and willing to provide surety for him and to ensure that he attended court. The area local administration did not think he was a security risk, to himself or others if released.

Clearly his community ties where he comes from are strong.

It is the first time he is coming into contact with the criminal justice system, and though the offence he is accused of is serious, he is innocent until proven guilty, and the prosecution have no objection to his release on bond.

The family of the deceased victim, a cousin and sister would go by the decision of the court. Her father passed away after the incident and her mother was reported to be mentally ill.

The accused has a fixed abode, a known family and relatives vouching for his attending court. There is no compelling reason to deny him bail.

His application is granted.

He is to be released on bond of Ksh 500,000 with one surety of a similar amount, to be approved by the Deputy Registrar. In addition, he will avail a recent full photo of himself, and ensure that he attends court as required.

Dated, delivered and signed at Nyeri this 15th day of January 2018.

Teresia M. Matheka

Judge

In the presence of;