



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL CASE NO. 10 OF 2017**

**REPUBLIC.....PROSECUTOR**

*Versus*

**MOSES NJAGI WACHIRA.....ACCUSED**

**RULING**

1. **MOSES NJAGIWACHIRA**( the accused) is charged **with the offence of murder Contrary to Section 203 as read with Section 204 of the penal Code**. He pleaded not guilty and his trial commenced on 20<sup>th</sup> February, 2018, when three witnesses testified. When the case was adjourned for further hearing the accused sought that he released on bail pending trial.

2. The application of bail was opposed by the prosecution on reliance of the affidavit of the investigating officer in this case.

3. In that affidavit the investigating officer deponed that he had established that the accused, if released on bail was likely to interfere with witnesses; that the accused's life would be in danger from the members of the community; and that the accused has a previous conviction for an offence of assault where he was sentenced to a jail term of 18 months.

4. The probation officer through his report dated 1<sup>st</sup> December, 2017 stated that the accused was unsuitable for release on bail because he had no fixed abode, his family members are unwilling to stand surety for him; that he had been chased away by the community from Karatina area, where he previously resided with his family members, because of his deviant behaviours of stealing and pick-pocketing; that when he moved away from Karatina he settled at Narumoru area, where the offence of murder occurred, and the community there is unwilling to accept him back.

5. **Article 49 (10 (h))** of the constitution provides that an arrested person has a right to be released on bond or bail, on reasonable conditions, pending trial, unless there are compelling reasons not to be release.

6. From the summary of the prosecution's argument and the probation officer's report, it becomes very clear that there is present an unacceptable risk, that if the accused is granted bail, he may fail to attend his trial. Justice Fred. A Ochieng in the case **REPUBLIC – V- AHMED MOHAMMED OMAR & 6 OTHERS [2010] eKLR** adopted the decision in the case of **REPUBLIC – VS- JOHN KAHINDIKARISA & 2 OTHERS** where it was held thus:

*“...Murder involves the loss of life of the victim who is a father, mother, brother sister, son or daughter of somebody in society. There is a victim who lost life and an aggrieved family. Murder touches on the social fabric and it affects the security of and peace in the community.*

*As a result, there is great desire by a court to be assured that all things being equal, the accused shall not likely but indeed will attend court on the day of the trial, freely voluntarily and without coercive compulsion.”*

7. The above case is applicable to the facts of this case.

8. In my view the evidence presented to this court sufficiently shows that there are compelling reasons to deny the accused bail. **Accordingly the application for bail is dismissed.**

***Dated and Delivered at Nanyuki this 18<sup>th</sup> April 2018***

MARY KASANGO

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Moses NjagiWachira

For accused.....

For state: .....

Language .....

**COURT**

Ruling delivered in open court

**MARY KASANGO**

**JUDGE**