



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 20 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ANTONY MWANGI KIMANI *Alias* KULIO.....ACCUSED

RULING

1. The Accused **ANTONY MWANGI KIMANI alias KULIO** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on the 31st day of March, 2017 at Mathare 29/30 Stage at Mathare Area within Nairobi County murdered **WYCLIFFE OCHIENG OWINO**.

2. He pleaded not guilty to the said charges and by an application dated 18th January 2018 and filed on 23rd January 2018 sought to be admitted to Bail and Bond pending the hearing and determination of the case on the ground that he was not a flight risk since he had a fixed abode and was also suffering from various ailments and diseases which required specialized and regular medical attendance.

3. When this matter came up for hearing before me on 13/2/2018, I ordered for pre-bail report which was not availed to court as at the time of this Ruling. On 1/3/2018 when the application came up for *inter-parte* hearing Mr. Meroka for the State indicated that he was not opposed to the accused being released on bail.

4. Bail is now a constitutional right of every accused person under **Article 49 (1) (h)** which can only be denied where there are compelling reasons not to be released. These compelling reasons have now been identified and reinstated in the **BAIL AND BOND POLICY GUIDELINES** issued by National Council on the Administration of Justice in **Section 4.9** as follows:-

- a. The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.*
- b. The strength of the prosecution case.*
- c. The character and antecedents of the accused person.*
- d. The failure of the accused person to observe bail or bond terms.*
- e. The likelihood of interfering with witnesses.*
- f. The need to protect the victim or victims of the crime.*
- g. The relationship between the accused person and the potential witnesses.*
- h. The best interest of child offenders.*
- i. The accused person is a flight risk.*
- j. Whether the accused person is gainfully employed.*
- k. Public order, peace and security.*

1. Protection of the accused persons.

5. It must be stated for record purposes that the prosecution did not file any affidavit in opposition to the application in addition to the confirmation by Mr. Meroka that he was not opposed to the accused being released on bond. It is therefore clear to my mind that there are no compelling reasons advanced to enable the court deny the accused his constitutional right to bail.

6. Having found that there are no compelling reasons advanced, the next issue for determination is as to what constitutes reasonable bond terms. In this case the accused faces a charge of murder where one of the sentences available upon conviction is death sentence. It must be taken into account that the objectives of bond is to secure the attendance of the accused person at his/her trial.

7. In setting the reasonable bond terms I have looked at the cases of **1. REPUBLIC v DOMINIC MUHANGANI [2015] eKLR** where the accused charged with murder was released on bond of Kshs.1,000,000/= with one surety, **2. REPUBLIC v FREDRICK MURIUKI GIKUNJU [2016] eKLR** Kshs.1,000,000/= with one surety of similar amount. I am therefore persuaded that a similar amount will be reasonable in the circumstances of this case.

8. There being no compelling reasons advanced, I hereby allow the application dated 18/1/2018 and order that the Applicant be released on bond on the following terms pending trial:-

a. Bond of Kenya shillings one million (Kshs.1,000,000/=) with one surety of similar amount.

b. The accused shall report to the OCS Muthaiga Police Station once after every thirty (30) days until the final determination of the case with the first of such mention being immediately upon release and thereafter at dates to be set by the said OCS.

c. The accused shall not go back to Mathare 29/30 Stage in Mathare Area where the offence is alleged to have been committed.

d. The accused shall make no contact in whatsoever nature with any of the prosecution witnesses either by himself or through agents.

e. In default of any of the terms herein, the accused bond shall stand cancelled without any notice to him whatsoever.

DATED, SIGNED and DELIVERED at Nairobi this 17th day of April, 2018.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the state

No appearance by Mr. Businge for the accused

Accused present

Court clerk: Karwitha/Paul