



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 23 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL MUTHIORA WAMBOI.....ACCUSED

RULING

1. The accused 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 25th day of March 2018 at Muthua area in Dagoretti Division in Nairobi murdered **JOHN ABWAO ALEMBI alias OMBOGO**. He pleaded not guilty to the said charges.

2. On 21/5/2018 in compliance with the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya 2010** the court directed the prosecution to file an affidavit if any on compelling reasons should they object to the accused being released on bond and in compliance with the provisions of Bond Bail Policy Guidelines ordered the probation officer to file Pre-bail and Social Inquiry Report on the suitability of the accused being admitted to Bail Bond including Victim Impact Report as per the provisions of the Victim Protection Act.

3. On 5/6/2016 Ms. Wegulu for the state stated that the prosecution did not have any compelling reasons and upon the submission of Pre-bail report, submitted that since the accused and the victims were neighbours he should be released on condition that he does not interfere with witnesses. Mr. Murage for the accused submitted that the accused had a fixed abode and was not a flight risk. He submitted that the fact that the victim's family were objecting to the accused being released on bond was not a compelling reason to deny the accused the enjoyment of his constitutional right.

4. I have looked at the Pre-bail report filed in court on 18/6/2018 in which it is noted that the accused studied in Uganda Mbale upto Senior 2 before dropping out of school in the year 2009 when he retired to Kenya and was engaged in construction works from that date until the time of his arrest. On the Victim Impact Statement it was indicated that the accused and the victim's family were neighbours and that the accused knew one of the witnesses who gave them information related to the accused and there was fear of the same interfering with the said witness.

5. Whereas bail is a constitutional right of every accused person and whereas the prosecution has not filed any affidavit in opposition of the accused being released on bond, this court is alive to the provisions of Victim Protection Act Section 4 (2) (b) which requires the court to take into account the interest of victims and to be given an opportunity to be heard at any time when making decision that is likely to affect their rights and interest

6. From the Pre-bail report it is clear that the accused and the victim's family are neighbours and know each other including witnesses who are likely to be interfered with or intimidated by the accused. I have also taken into account the fact that the accused has connection with Uganda Mbale where he attended school and having taken judicial notice on how it is easy to cross over borders, I have come to the conclusion that there are compelling reasons to enable the court deny the accused his constitutional right to bond at this stage.

7. The accused person shall remain in custody until the witness who gave information on him to the victim's family has testified together with any other witness who was staying together with the accused and the deceased at Muthua area of Uthiru Location.

8. The accused will be at liberty to renew his bond application upon the testimony of the said witnesses. The state is hereby directed to supply the defence with the witness statements in respect of the said witnesses for purposes of fast tracking their testimony and it so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 26th day of June, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Wegulu for the State

Mr. Murage for the Accused

Accused present

Court Assistant - Karwitha