



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 41 OF 2018

REPUBLIC.....RESPONDENT

VERSUS

WASHINGTON WACHIRAACCUSED

RULING

1. The accused is 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 10th day of June 2018 at about 3.30 p.m. in Karura area in Kawangare within Nairobi country murdered **SIMON NGIGE NJENGA**.

2. He pleaded not guilty and in exercise of his constitutional right under **Article 49 1 (h)** moved the court to be released on bond on reasonable conditions pending trial and in compliance with the provisions of the Judiciary Bail and Bond Policy Guidelines the court ordered for Pre-bail report which has been filed in which it was stated that the accused was born in a family of seven (7) siblings, two of whom have died and was mostly taken care of by his mother after her marriage with the accused father failed. The accused is married to one W.W. with two children in class five (5) and two (2) respectively and that at the time of this arrest the accused was supporting his siblings and mother and that his wife has since left her matrimonial home.

3. It was further stated that the accused sustained severe injuries on his limbs and back after being lynched by members of the public at the scene of crime and has not been given proper medical care while in custody. On Victim Impact Statement it was stated that the contacts given through the court file declined to meet the probation officer and therefore their input under the provisions of the Victim Protection Act has not been taken into account.

4. When this matter came up for hearing before me, Ms. Wegulu for the prosecution submitted that they did not have any objection to the accused being released on bond provided that the terms of the bond are such as to make the same appear in court. Mr. Kiptum for the accused submitted that the accused was the sole bread winner for his family with two minor children and that since his arrest the same has not been accorded adequate medical treatment and therefore if released on bond he would be able to get specialized medical treatment.

ANALYSIS AND DETERMINATION

5. Bond is now a constitutional right of every accused person and may only be denied where there is sufficient compelling reasons to enable the court do so. In this matter the prosecution has not advanced any compelling reasons at all save that the accused is a neighbour of the victim's family.

6. Whereas the accused is charged with the offence of murder the court must not at this stage of the trial go into the merits of the prosecution case which has not been presented before it but to be alive to the fact that under **Section 124** of the **Criminal Procedure Code** the purpose for bond is to ensure that the accused attend and continues to attend court until otherwise directed by the court. Under **Section 123 (2)** the amount of bail shall be fixed with due regard to the circumstances of each case and shall not be excessive.

7. From the material placed before me, I find that there is no sufficient reasons advanced to enable me deny the accused the enjoyment of his constitutional right and shall therefore order that the same be released on bond.

8. The final issue to be determined is what constitutes reasonable bond terms taking into account the fact that should the accused be convicted, one of the sentence which the trial court may pass is death sentence which might make it attractive for him to abscond should he feel that the evidence produced by the prosecution is strong enough and may lead to his conviction. In setting adequate bond terms I have looked at the following High Court cases for guidance:-

(a) Republic v Dominic Muhangan, Cr. Case No. 41/2015, Kakamega reported in [2015] eKLR where Sitati J. set bond at

Kshs.1,000,000/= with two sureties.

(b) Republic v Danford Kabage Mwangi, Cr. Case No. 8 of 2016, Nyeri [2016] eKLR where Mativo J. set bond terms at Kshs.500,000/= with one surety or in the alternative cash bail of Kshs.300,000/= plus one surety of similar amount.

(c) Republic v Antony Mwangi Kimani, Cr. Case No. 20 of 2017, Nairobi [2016] eKLR this court set bond terms at Kshs.1,000,000/= with one surety of similar amount.

9. Having looked at bond terms awarded by the High court I am of the considered view and hold that a bond term of **Kshs.500,000/=** with one surety of similar amount will be reasonable and therefore order that the accused be released on bond on the following terms:-

a) Bond of Kenya shillings five hundred thousand (Kshs.500,000) with one surety of similar amount or

b) In the alternative, cash bail of Kenya shillings two hundred and fifty thousand (Ksh.250,000) with one surety of similar amount,

c) The accused shall make no contact in whatever nature with any known prosecution witnesses either directly or indirectly through agents.

DATED, SIGNED and DELIVERED at Nairobi this 27th day of **September, 2018.**

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Wegulu for the State

Mr. Kiptum for the accused

Accused present

Court assistant Karwitha