



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR. NO. 169 OF 2017

REPUBLIC.....APPELLANT

-VERSUS-

MUTUKU KIILU.....RESPONDENT

RULING

1. The accused is charged with offence of Murder contrary to Section 203 as read with 204 of the Penal Code, Laws of Kenya.
2. The particulars being that on 02/01/2015, at Ngiluni Village, Makindu District, Makeni County murdered Mike Mtitu Ndeti.
3. The accused pleaded not guilty to the charge on 26/01/2015 but the matter has not commenced hearing.
4. The accused has now moved court for an order for him to be released on bail/bond pending trial.
5. He says he is still innocent until proved guilty and that he will abide by any measurable conditions the court may impose in granting bail/bond.
6. He said before arrest he was a farmer. He is married with children and spouse.
7. The prosecution opposes bail on the grounds that the witnesses (3 of them) have expressed fear and they may not testify against him once released on bond.
8. The court ordered for pre-bond report to be filed by the probation officer and the investigating officer to file an affidavit over the issue of the accused situation.
9. The probation report is favourable to him safe for the fear that he may be harmed by the deceased family. There is apprehension on prosecution side that about 3 witnesses may decline to testify due to fear of the accused if released on bond.
10. Of course bail/bond is now entrenched in the constitution Article 49 as a fundamental right. However same is subject to limitations such as compelling reasons to deny the same.
11. The policy guidelines on grant of bail/bond have also been put in place.
12. The core considerations are whether the accused will avail himself to court for trial once granted bail/bond.
13. However collateral to that is that whether he would interfere with witnesses if released on bail/bond.
14. After listening the submissions by the both sides and after perusing the investigating officer affidavit and the probation bail report filed herein, I find that it is only fair I strike a balance between the rivaling parties by making the following orders;

1) The prosecution will avail the 3 witnesses whom they fear might be intimidated by release of accused on bond to testify expeditiously in the next hearing date.

2) The accused bail terms will thereafter be set and upon fulfilling the same he will be set at liberty.

Orders accordingly.

SIGNED, DATED AND DELIVERED THIS 30TH DAY OF OCTOBER 2018, IN OPEN COURT.

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C. KARIUKI

JUDGE