



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE MURDER NUMBER 49 OF 2018

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

-VERSUS-

NICHOLAS CHIRCHIR KIPNG'ETICH.....ACCUSED

RULING

The Accused **Nicholas Chirchir Kipng'etich** was on the 8th October 2018 charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

He pleaded not guilty to the charge on the 22nd October 2018. Through his appointed advocate Ms. Muthoni, he applied to be released on reasonable bail terms, a request objected to by the prosecution.

The Investigating officer PC Alex Muinde has filed an affidavit in opposition to grant of bail to the accused. It is sworn on the 6th November 2018. I have looked at the grounds stated in the affidavit and considered oral arguments by Mr. Chigiti for the Director of Public Prosecutions.

Article 49(1) (h) of the Constitution of Kenya gives an arrested person the right to be released on bond or bail, on reasonable terms, unless there are compelling reasons.

The right of an accused person to be presumed innocent is provided under **Article 50(2)** of the Constitution of Kenya, hence the rationale that an arrested person is presumed innocent until proven guilty and therefore the right of bail or bond.

The investigating officer in his objection has taken a stand that as the accused is alleged to have been found in possession of the murder weapon and had disappeared from the scene of crime, was a flight risk. It is also the investigation's averments that the accused is a habitual robber and capable of inferring with witnesses. There is no evidence tendered in support of the above averments. I cannot say that the prosecution and the investigating officer have presented to this court any compelling reasons to persuade me to deny bail to the accused – **Criminal Case No. 8 of 2016 Republic -vs- Danford Kabage Mwangi**.

Nothing has been placed before the court to show that the accused may not attend court if granted bail. It has been stated in witness statements that the accused has a place of abode, at Lukukwet village Njoro, Nakuru County, contrary to the investigating officer's assertion.

For those reasons, I find no compelling reasons to deny the accused this constitutional right to bail. - **Criminal Case No. 48 of 2016 R -vs- Richard David Allen (2016) e KLR** where it was reiterated that the right of an accused to be presumed innocent and the right to liberty are paramount, and ought to be allowed upon reasonable terms – Article 49(1) (h).

It has not been shown that the accused would interfere with witnesses – **Criminal Case No. 46 of 2017 – Republic -vs- David Muchiri Mwangi (2018) e KLR**.

I have considered all the submissions and I am persuaded that the accused ought to be admitted to bail there being no compelling reasons to deny him.

I shall therefore release the accused on bail but upon the following conditions and terms,

- 1. That the accused do execute a bond of Kshs.500,000/= with two sureties of a similar amount.***

2. Alternatively, the accused may be released on a cash bail of Kshs.300,000/= plus one surety of a similar amount.

3. That he shall attend court as and when required to by the court.

4. That he shall not interfere with any witnesses particularly the family of the deceased.

It is so ordered.

Dated, signed and delivered this 26th Day of November 2018.

J.N. MULWA

JUDGE