



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO. 40 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN GATEMBO MWANGI.....ACCUSED**

**RULING**

1. The accused prays for bail pending trial. The *notice of motion* is dated 5<sup>th</sup> December 2018.
2. The application is contested by the Republic.
3. There is filed a comprehensive *pre-bail report* dated 18<sup>th</sup> December 2018. Its summation is that the *safety* of the accused is *not* guaranteed.
4. Learned counsel for the accused challenged the report. She submitted that the accused is deemed innocent; and, that bail is guaranteed by the **Constitution**. She added that the accused is a father of three children; and, that he prays for release to adequately prepare for his defence.
5. The learned Prosecution Counsel submitted that the safety of the accused is *not* assured; and, that there are compelling reasons for denial of bail.
6. The accused faces the grave charge of *murder*; but he is still deemed *innocent*. Under **Article 49 (1) (h)** of the **Constitution**, he is entitled to bail pending trial *unless* there are *compelling* circumstances. See **Muraguri v Republic** [1989] KLR 181, **Republic v Elias Kipkemoi**, Eldoret High Court Criminal Case 42 of 2014 (unreported).
7. The overarching objective of bail is to ensure the accused *attends* his trial. **Muraguri v Republic** [supra]. Relevant matters to be considered by the court include: the nature of the charge; the likely sentence; previous criminal records, the *views* of the *family of the victim*, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
8. The accused is charged for the unlawful killing of *Mwangi Mirogu* on 23<sup>rd</sup> October 2018 in *Muchungucha Village within Murang'a County*.
9. The social report concludes as follows-

*“The locals are still hostile. His house was burnt down by members of the public. The villagers and local administration do not support his release...and may harm him if released. The victim’s family opposes his release....they fear he may intimidate the witnesses” [Ephasis added]*
10. There is clearly palpable anger at the village home; and, possibility of a revenge. Furthermore, the **Victims Protection Act 2014** requires the views of victim’s family to be taken into account at this stage.
11. I empathize with the accused. But I have reached the conclusion that his *safety* would be in *jeopardy*. That to me is a *compelling* reason *not* to release the accused on bail.
12. The application for bail is *refused*.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 20<sup>th</sup> day of December 2018.

**KANYI KIMONDO**

**JUDGE**

***Ruling read in open court in the presence of-***

Accused.

Ms. Muritu for the accused.

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.