

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 10 OF 2015

ALBANUS NYAYO KIMEU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein was charged with murder contrary to section 203 as read with Section 204 of the Penal Code. It is alleged that on the 29th day of January, 2015 at Katangi location in Yatta Sub-County within Machakos County, he murdered Teresia Nduku Matingi. The Applicant pleaded not guilty to the offence. The Applicant's counsel has now made an application by way of a Notice of Motion dated 23rd November 2016, seeking for the Applicant to be granted bond with an alternative of the cash bail pending trial.

The said application was supported by an affidavit sworn on the same date by the Applicant wherein he stated that he is not a flight risk, as he has a permanent place of abode at Kalawa in Makueni County. Further, that he is a law abiding citizen and does not have any previous criminal records or convictions. He also averred that the deceased herein was his wife and they had three (3) children who are all still in school, and desperately require and need his help towards meeting their daily needs.

At the hearing of the application on 30th January 2017, the Prosecution submitted that it would file an affidavit in response by the next day and they were granted leave to file the same within 3 days, and a ruling on the application reserved. The prosecution to date have not filed any affidavit and/or opposed the Applicant's application.

The issue therefore before the Court is whether the Applicant should be released on bail and/or bond and if so, on what terms. Article 49 (1) (h) of the Constitution permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. No such compelling reason has been shown by the prosecution, and the Applicant's application is thus found to be merited in light of the fact that he is presumed innocent until found guilty.

I accordingly admit the Applicant to bail/bond pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/=, and shall provide one surety of similar sum.
2. The surety for the Applicant shall be approved by the Deputy Registrar of this court.
3. The Applicant shall not have any contact with, or in any other manner interfere with the prosecution witnesses in this case.
4. The Applicant shall attend a mention before the Deputy Registrar of this Court once every month.
5. The Applicant shall be required to attend court for the remainder of the trial without fail.
6. In default of orders 1, 2, 3, 4 and 5 hereinabove, the Applicant's bond shall be cancelled

immediately and his surety called to account.

It is so ordered.

DATED AT MACHAKOS THIS 27TH MARCH 2017.

P. NYAMWEYA

JUDGE