



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 6 OF 2017

REPUBLIC.....PROSECUTOR

versus

MORRIS KIRIMI MUTUA.....ACCUSED

RULING

1. **MORRIS KIRIMI MUTUA (Accused)** aged 24 years is facing a **charge of murder contrary to section 203 as read with section 204 of the Penal Code**. He seeks he be released on bail pending his trial.

2. His learned counsel Mr. Otieno submitted that the court should advance the course of justice by granting the accused bail as provided under **Article 49(1)(h)** of the constitution because the state had failed to give any compelling reasons why the accused could not be granted bail.

3. Article 49(1)(h) of the Constitution provides that an arrested person has a right:-

“to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

Justice M. J. Anyara Emukule in the case **REPUBLIC V MILTON KABULIT & 6 OTHERS (2011) eKLR** discussed the principle underlying the granting of bail and stated viz:-

“I understand the principal purpose for the grant of bond or bail is to reinforce cardinal principle of the criminal law procedure as is enshrined in Article 40(2)(a) of the constitution that an accused is presumed innocent until the contrary is proved, and unless there are compelling reasons for not doing so, (Article 49(1)(h)), pending such trial to be released on bond or bail.”

4. The pre-bail probation report is favourable to the accused’s release on bail. In that report the accused was described by the interviewer as well behaved. He has strong community ties. Although the murder victim was the accused’s father, the accused’s family and the community generally are all in favour of the accused release on bail.

5. Since there is no negative view to the accused’s application for bail and because an accused’s right to bail is recognised in our constitution this court will grant bail to the accused. It will however be born in mind that the primary purpose for bail is to ensure an accused person attends his trial. In granting bail this court will bear in mind the limited financial means of the accused and his family.

6. In view of the above this court hereby orders **MORRIS KIRIMI MUTUA** to be released on bail pending trial on provision of his own person bond of Kshs.500,000 plus one surety of similar amount.

DATED and DELIVERED at NANYUKI THIS 2nd day of AUGUST 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant: Njue

Accused: Morris Kirimi Mutua

For Accused

For the State:

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE