



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO. 20 OF 2015

REPUBLICPROSECUTOR

VERSUS

MWELA MUHINDIACCUSED

RULING

1. The accused faces a charge of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on 23rd January, 2015 at Githurai 45 at Kasarani District within Nairobi County murdered ELIZABETH MBULA.
2. He pleaded not guilty to the said charges and in exercise of his right and in exercise of his right under **Article 49** of the Constitution of Kenya 2010 the same applied to be released on bond pending trial and submitted that the purpose of bond/bail is to secure the attendance of an accused person at the trial.
3. It was submitted that both the pre-bail report and the affidavit filed by the state, no attempt was made to show that the accused may not attend the trial if released on bond. It was further submitted that the allegation that the accused was a threat to the family of the deceased had not been substantiated.
4. In reply to the said application the state filed an affidavit sworn by PC ISAAC MUKANISI wherein it was deponed that the accused is likely to interfere with witnesses who were well known to him and further that the same had been very uncooperative with the OCS Githurai Kimbo by failing to appear at the station when summoned to assist with investigation.
5. The law as it now stands is that every accused person is entitled to be released on bond pending trial unless there are compelling reasons which reason must be provided for by the state and the court shall in considering whether to release the accused on bond consider the following among other facts: -
 - a. The chances of the accused absconding.
 - b. The likelihood of the accused person committing further offences while on bond.
 - c. The likelihood of interference with witnesses or obstructing the course of justice or tampering with the evidence.
 - d. Accused person own safely security or protection.
 - e. Whether the accused person is likely to pose public danger by being released on bail
 - f. Whether the accused person is already serving a custodial sentence for another offence.
 - g. Whether the public confidence on the administration of justice will be diminished.
 - h. The nature and seriousness of the offence and the gravity of the punishment likely to be imposed.

- i. The character antecedents, associations and community ties of the accused person.
 - j. The health of the accused.
6. I must also point out that the trial court has a wide discretion when it comes to grant of bail and to guide the court, the National Council on the Administration of Justice has developed bail and bond policy guidelines which reinstates the above stated conditions.
 7. In the present application, to guide the court I ordered for pre-bail report. It is indicated that the family of the victim was fearful of the accused being released on bond while the local administration indicated that based on the nature of the offence, the community would be hostile towards the accused if he is released on bond.
 8. Bail and bond policy guidelines now require the court to take into account the rights of the victim of the offence and that of the public apart from those of the accused while granting bond and upon considering the probation officers report against the submissions by the accused to the effect that the accused intends to go to his rural area when released on bond, I am of the considering view that compelling reasons have been advanced to enable me deny the accused his right to bail at this moment.
 9. These compelling reasons includes the attitude of the community including the Administration towards the accused and the fact that the accused intends to be out of the jurisdiction of this court if released on bond.
 10. The accused shall be in custody pending the hearing and determination of this case but shall be at liberty to renew his bail application once the evidence of one (LW) a minor, and the family of the victim have been tendered.

Dated, signed and delivered at Nairobi this 26th day of January, 2016.

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J. WAKIAGA

JUDGE

In the presence of

Miss Mwaniki for the state

Mr. Oundu for the accused

Accused - Present

Mr. Gitonga - court clerk