



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 14 OF 2013

REPUBLIC

VERSUS

J K K.....ACCUSED/APPLICANT

RULING

On 1st July, 2013, the applicant was charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. According to the particulars of the offence, on the 1st day of June, 2013 at Kwa Mwaura village in Laikipia County, the appellant murdered Veronica Wambui Mugo.

An application for bail pending trial was filed on the accused person's behalf by his counsel on 6th November, 2013 and was supported by the accused person's counsel's affidavit sworn on the same date. The application was opposed by the state and a replying affidavit in that regard was sworn by Corporal David Charo who described himself as the investigating officer in the case.

Besides the affidavits of both the applicant and the state, a pre-bail report was prepared and filed by Mrs L.W. Njue the Sub-County Probation Officer of Nyeri Central in respect of the applicant's background.

According to counsel for the accused, the latter was arrested while residing at Mukima farm in Laikipia East. The accused is ready and willing to abide by any conditions that the court may impose upon being admitted to bail and that he has undertaken not to abscond from court sessions. In any event, so the counsel has deposed there are no compelling reasons not to release the accused person on bond.

The investigations officer on the other hand swore that he is fully conversant with the applicant's case and to the best of his knowledge, the applicant stabbed the deceased sixteen times and attempted to commit suicide using the same murder weapon that he stabbed the deceased with. Both the deceased and the accused person are alleged to have been taken to hospital where the deceased was pronounced dead on arrival. The officer also swore that the accused person's father attempted to induce him into releasing his son from lawful custody and there is therefore the danger of interference with witnesses. The applicant also hails from Timboroa and according to the officer the applicant is likely to abscond for this particular reason.

The probation officer made a home background report on the accused person; she established that he hailed from Timboroa location of Wareng Sub County in Uasin Gishu County and was the eldest child in a family of six. According to his father whom the officer interviewed, the applicant was born in 1989 at *[particulars withheld]* village and was enrolled at *[particulars withheld]* Primary School. While he was at school, he developed hearing complications that affected his academic performance. He later dropped out of school and went to live with his aunt, A W, in Nyahururu. At the time of the offence, the applicant

was employed as a foreman in a certain farm in Nanyuki.

Article 49(1) (h) of the Constitution provides for the basis for bail pending trial; it states that:-

49. (1) An arrested person has the right-

(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(g)...

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

The compelling reasons which the state has asked this court to consider are that the applicant is a flight risk and secondly, that he is has suicidal tendencies. No proof, however, was given for any of these alleged accused person's characteristics. It has not been demonstrated that the accused person was arrested while on the run after the commission of the offence or that he was in any other way trying to avoid arrest.

The allegation that the accused person's father attempted to influence the investigations officer in the course of his investigations was also not proved. It must be remembered if the allegations by the investigations officer are true, the deceased's father's conduct amounted to a criminal offence but there is no evidence that such offence was reported anywhere or that the culprit was charged in any court for it.

Again, apart from the bare statement that the accused person attempted to commit suicide and that both the accused and the deceased were taken to hospital, there is no proof of these allegations; there is nothing in the investigation officer's affidavit that suggests that the accused person was admitted in any hospital or was treated for the alleged self-inflicted injuries or any injuries for that matter.

The probation report, on the other hand, is limited in certain respects; for instance, apart from interviewing the applicant's father, it would appear that the only other person the probation officer interviewed was the applicant's grandfather who said that he was ready to stand surety for the accused person. The accused himself was not interviewed and neither was any member of the deceased's family nor any member of the local community from which the deceased or the accused person hailed. There is also no word from the local administration of the deceased's or the accused person's community on the accused person's character or conduct prior to the commission of the offence.

The little I gather from the probation report is that the accused person has a family and a home. Releasing him on bail does not expose himself or the community from which he hails to any threat.

Upon consideration of the material before me, there is nothing in it that brings out any sort of reason that would properly be regarded as a compelling reason not to release the accused person on bail pending trial. There is no doubt that the offence with which the accused is charged is grave but on the other hand, he is presumed to be innocent until proved guilty. In the absence of any reason not to release the accused person on bond pending his trial all that this court has to consider are that the bail or bond terms upon which the accused is released are such that the accused person will attend his trial or attend court on any

such occasion that he is required. (See **Nganga versus Republic (1985) KLR 451**). I am therefore inclined to allow the accused person's application for bail pending his trial on the following conditions:-

The applicant shall execute a bond of Kshs. 1 Million with two sureties of the like sum;

2. The applicant shall appear before the Deputy Registrar, High Court Nyeri, once every month until his trial has been concluded;
3. The applicant shall not leave the jurisdiction of this honourable court without the court's prior permission.

Dated, signed and delivered in open court at Nyeri this 26th day of February, 2016

Ngaah Jairus

JUDGE