



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 2 OF 2016

REPUBLIC.....STATE

versus

JOSEPH MWANGI WATHURI ACCUSED

RULING

1. **JOSEPH MWANGI WATHURI** is facing a charge of *murder contrary to section 203 as read with section 204 of the Penal Code*. He pleaded not guilty. His trial date is yet to be fixed. He has now applied to be released on bail/bond pending trial.

2. The accused is 60 years old. He is a family man with a wife, two children and grand children. Prior to his arrest accused worked as a cleaner in Inooro Secondary School. His family resides at Sweet Waters while he was renting a room near his place of work. It is near his place of work that the offence is alleged to have occurred.

3. The bail assessment report by the Probation Office on the accused paints a picture of a man who is loved by his family and the community around the area of Sweet Waters. Indeed his pastor at the A.I.C. Equator Chapel has written a letter, which is before court, confirming that accused has attended the church since 1985 and in the year 2001 he renewed his marriage vows with his wife and their children were baptised. Similarly the Senior Assistant Chief of Marura Sub-Location wrote a letter confirming that the accused was a law abiding person.

4. I have considered the affidavit evidence and the submission made by the learned counsels. I need to state that there is indeed no compelling reason brought to the attention of the court why the accused should not be released on bail pending trial. There is indeed no basis to the deposition in the investigating officer's affidavit where he stated that the accused is likely to abscond or change his place of residence. That deposition is countered by the letters written by the accused pastor and the area assistant chief. In this regard I rely on a case decided by the Supreme Court of India namely **MASROOR V STATE OF UTTAH PRADESH AND ANOTHER (2009) (14) SCC 286**, which case was cited in **REPUBLIC -V- DIANA SULEMAN SAID & ANOTHER (2014) eKLR** as follows:

“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to balance. Liberty of a person accused of an offence would depend upon exigencies of the case. It is possible that in a given situation, the collective interest of the community may out-weigh the right of personal liberty of the individual.”

5. In this case balancing the rights of the accused and of the community. I find that the granting of bail favours the accused. It is only the family of the deceased that has indicated that it is not in favour of granting bail to the accused. The deceased family however reside near Inooro Secondary, whereas the accused family reside at Sweet Waters. In that regard it shall be a condition of release on bail that the accused person, until the conclusion of this case, shall not reside or visit the area near or around Inooro Secondary School.

6. In conclusion and bearing in mind the economic circumstances of the accused, I order as follows:-

(a) The accused be released from custody pending his trial on his execution of a personal bond of Kshs.500,000 with one surety of similar amount.

(b) The accused shall not during the pendency of this trial visit or reside near or around Inooro Secondary School.

It is so ordered.

Dated and delivered at Nanyuki this 24th March 2016.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue

Accused: Joseph Mwangi Wathuri

For Accused:

For the State:

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE