



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
HIGH COURT CRIMINAL CASE NO.78 OF 2015

REPUBLIC.....STATE

-VERSUS-

ZACHARIAH GEKONE NYAKANGO.....ACCUSED

R U L I N G

On 19th January 2016, the learned counsel for the accused person, Mr. Nyamwange asked this court to grant bond to the accused person.

The accused person Zachariah Gekone Nyakang'o was charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code.**

The particulars thereof were that on the 3rd day of December 2015 at Siranda village, Keera location in Nyamira South sub-location within Nyamira County murdered **MERCY KERUBO NYAKANG'O.**

He denied the offence by pleading **“not guilty”** on the 19th January, 2016.

Up to this point the accused is presumed innocent and such is constitutionally entitled to bond/bail.

Article 49 (1) (h) states,

“An arrested person has the 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.”

The state by their affidavit sworn on 15th day of February, 2016 and filed on the same day says in

Paragraph 4, **“that the deceased and the accused are related with the former being the biological sister of the latter”** and in paragraph 6,

That the prosecution witnesses are close family members of the accused.

And in paragraph 7,

That if the accused is released on bond before the testimonies of these witnesses, there is high likelihood of him interfering with witnesses arising from the flow of sympathy based on blood relationship”.

And therefore the state opposes the bond application by the accused.

In Republic –versus- Lucy Njeri Waweru & 3 Others Criminal Case No. 6 of 2013.

The High Court at Nairobi

F.N. Muchemi J

February 21, 2013

The court held that in considering whether the court would grant bail, the established principles applicable were the following:

- a. Whether the accused persons were likely to turn up for trial should he be granted bail,**
- b. Whether the accused persons were likely to interfere with witnesses,**
- c. The nature of the charges**
- d. The security of the accused if released on bond,**
- e. The severity of the sentence,**
- f. In case of illness of the accused persons, the nature and severity of the illness, and**
- g. Whether the accused persons had a fixed abode within the jurisdiction of the court.**

In conclusion it held that the prosecution established that the four accused persons were likely to interfere, influence and intimidate the key witnesses and were also at risk of harm from close family members of the deceased if bail were granted.

The application was thus dismissed.

FINDINGS AND DETERMINATION

This court agrees with the prosecution's submission that should the accused be released on bond, he is likely to influence the witnesses through intimidation and threats. This is, enough or sufficient compelling reason to deny bond/bail to the accused person.

Accordingly, the application for bond be and is hereby dismissed. The accused is, however, at liberty to revisit the application for review as soon as certain closely related witnesses have testified in this matter.

It is so ordered.

Dated this 18th day of March, 2016.

C.B. NAGILLAH

JUDGE

In the presence of:

Nyamwange for the accused person

Malesi for the State

Mercy - Court Clerk