



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 26 OF 2015

REPUBLICPROSECUTOR

VERSUS

G K NACCUSED

RULING

1. The accused **G K N** alias **G R** was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the 10th of February, 2015 at Dagoretti Centre Nairobi within Nairobi County murdered **BERNARD NDEGWA MUTHEE MUNYIRI** alias **MUSEVENI**.
2. He pleaded not guilty to the charges and by a Notice of Motion dated 14th January, 2016 sought to be released on bail/bond pending the hearing of the case. The application was supported by an affidavit purported to have been sworn by the accused person before Solomon Mugo Advocate on 14th day of January, 2016 in which the applicant deponed that by the time of his arrest he was a businessman and a farmer within Dagoretti Centre where he eked a lawful living.
3. It was stated that during the investigation of this case he co-operated fully with the police and that the deceased was fatally injured in a drunken confrontation. It was further deponed that the applicant is an orphan and a sole breadwinner for his siblings including one S K a form IV student at [Particulars Withheld] High School.
4. In response to the said application the State filed a Replying Affidavit through **CPL ADEN HASSAN BARE** an investigating officer in which he deponed that the applicant if released on bond will interfere with the witnesses some who are well known to him and who have requested to testify in camera due to the fear of the accused person.
5. In compliance with the provision of Victim Protection Act and the guidelines set out in the Bond and Bail Policy Guidelines, the court ordered for social inquiry report on the accused which has been filed, in which it was recommended that the accused be released on bond to enable him reconstruct his life while undergoing trial as his wife immediately upon his arrest deserted her matrimonial home together with their two children.
6. Bond is now a Constitutional Right of every accused person under the provisions of Article 49(1)(h)

and can only be denied if there are compelling reasons.

7. It was submitted by Mr. Muchiri for the accused person that the same is at this stage presumed innocent until proven guilty and that the same has a strong defence against the prosecution case and that the state has not demonstrated that the accused will interfere with witnesses. Mr. Mwenda for the State submitted that there were some unnamed witnesses who had requested to testify in camera since they are known to the accused person.

8. I have had the advantage of looking at the social inquiry report and the submissions by the counsels for the parties herein. I am not persuaded that the State has placed enough material before the court to make an interference that the accused if released is likely to interfere with witnesses. I have also noted that though the accused must undergo trial at which the State is under obligation to prove his guilty, the court as a court of justice and mercy ought to accord the accused person an opportunity to re-organize his life while pending the conclusion of this matter.

9. Whereas one life has been lost and whereas there is the possibility of the accused being convicted, pending the conclusion of the case and having taken into account the probation officer's report I am persuaded and hold that this is a case where the accused ought to be tried while out on bond to enable him put his house and the rights and interest of his younger family in order noting that his future remains uncertain.

10. I will therefore allow the application herein and order that the accused be released on bond on the following terms:-

a) Bond of Ksh.500,000/- together with two sureties of similar amount.

b) In the alternative cash bail of Kshs.200,000/- together with a bond of Kshs.300,000/-.

c) During the period of his trial the accused shall not make any contact with any of the prosecution witnesses known to himself and the deceased and shall not stay at Dagoretti Centre where the offence is alleged to have occurred.

d) The accused shall report to the Deputy Registrar of this court once after every 30 days at a date to be set by the said Deputy Registrar while approving sureties.

DATED, SIGNED and DELIVERED at Nairobi this 21st day of April, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the state

Mr. Mbanya for Wachira for the accused

Accused present

Tabitha Court clerk