



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO. 27 OF 2016

REPUBLIC.....PROSECUTOR

versus

JOSEPH LEKINI LEKUPUNY.....ACCUSED

RULING

1. **JOSEPH LEKINI LEKUPUNY** has in this case pleaded not guilty to the charge of murder contrary to section 203 as read with section 204 of the Penal Code. Pending his trial he has sought that he be granted bail pending trial.

2. The right to bail is a constitutional right. In the case **REPUBLIC V MUMUSH HIRBO FAJA (2014)eKLR** the court stated thus:-

“Article 49(1)(h) provide that accused person is entitle to be released on bond /bail unless the prosecution has compelling reasons to the contrary. The right to bail is therefore not absolute and it is at the discretion of the court.

The right to bail does not depend in on whether or not the prosecution have strong evidence against the accused. The relevant constitutional provision does not classify offences that areailable or not – Bail is open to all offences including capital offences. The basis of this right has a bearing on the presumption of innocence until proven guilty as provided for by Article 50(2)(a). The seriousness of the offence and the strength of the evidence is therefore, not a basis of denying the accused bail.”

3. The pre-bail probation report is favourable to the accused being released on bail. He is described as a father of two, married to two wives. He resides at Posta Makadara village and up to the date of his arrest in respect to the present case he was described as a person of good character. The victim’s family, although bitter about the loss of their kin, do not pose a threat to the accused if released on bail.

4. Learned Senior Principal Prosecuting Counsel Mr. Tanui did not oppose the bail application.

5. In view of the above the accused shall be released on **bond of Kshs.500,000 with two sureties of similar amount each.**

DATED AND DELIVERED THIS 19TH DAY OF DECEMBER 2016.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant

Accused: Joseph Lekini Lekupuny

For accused:

For the State:

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE