

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 4 OF 2011

REPUBLIC..... STATE COUNSEL

VERSUS

RAPHAEL MBOGO WACHIRA)

TERESA WANGUI MAINA)..... ACCUSED PERSONS

RULING

1. The accused persons were charged with Murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of such were that on the night of 22nd and 24th day of January 2011 at Kinaiyu village within Nyeri jointly murdered GEORGE MAINA GATHENYA.
2. They both pleaded not guilty to the said charges and matter fixed for hearing on the 6th December 2011 when the same did not proceed. It was once again fixed for hearing on 19th July 2012 when the matter was taken out of the hearing list since there was only one prosecution witness was present.
3. On 5th December 2013 and in line with Constitution of Kenya 2010 the court directed the state to file an affidavit if they opposed the accused being released on bond and further directed that pre-bail Report be filed to assist the court in arriving at suitable bond terms.
4. Whereas the state through Mr. Cheboi state counsel submitted that the state did not have any reasons to deny the accused persons bond. The prebail report indicated that there is still bitterness toward the accused persons at the victim's village. It is also clear that the second accused was the wife of the victim while the 1st accused was their househelp. It is also clear from the report that the 2nd accused has young children who have been staying with their grandparents in the absence of the accused person.
5. In granting bond the court must balance the rights of the accused persons to their Constitutional right to bond against the nature of the offence and there is a possibility that most of the prosecution witnesses will be related to the 2nd accused and therefore her presence in the home during the trial will not be in the best interest of justice.
6. I would therefore at this stage decline to grant the accused persons bond pending trial. The same are at liberty to move the court for bond once the trial commences.

Date and delivered at Nyeri this 27th day of June 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the presence of the accused person their advocates and Miss Maundu for the state. Mention on 15th October 2014.

J. WAKIAGA

JUDGE

27/6/2014