



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E002 OF 2021

REPUBLIC.....PROSECUTOR

VS.

JAMES WAINAINA MBURU.....ACCUSED

RULING

1. This is a ruling on bail application made by **JAMES WAINAINA MBURU** (the accused). The accused is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. He pleaded not guilty to the charge.
2. The learned counsel for the accused, Mr. Muiru made an impassioned plea for the accused to be released on bail/bond on reasonable terms. The learned counsel stated that he had discussed with the accused the need to adhere to the terms of his release on bail/bond and that his client was agreeable to follow the terms set out by the court.
3. The probation pre-bail report is favourable to the release of accused on bail/bond. That report shows that the accused's family does not have land registered in their name, they therefore request that the accused be released on cash bail of Kshs.300,000/=.

ANALYSIS

4. The constitution under **Article 50(2)** pronounces that one of the components of fair trial to includes the right to be presumed innocent until contrary is proved. That presumption of innocence is at the bail hearing as well as at the trial stage. The right not to be denied reasonable bail without just cause or what the Constitution refers to as compelling reason, is entrenched in the constitution under **Article 49(1)(h)**. The nature of the charge a person faces is relevant and should be considered in bail/bond application. This was so stated in the case **REPUBLIC VS. ROBER ZIPPOR NZILU (2018) eKLR** as follows:-

“10. Gravity of the offence as a consideration was appreciated by Mbogholi Msagha, J in Criminal Application No. 319 of 2002 PRISCILLA JEMUTAI KOLONGE VS. REPUBLIC (unreported) at page 3, wherein he held as follows:-

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.’”

5. With the above discussion in mind, I grant the following orders:-

- (a) **James Wainaina Mburu** is granted bond of Kshs.500,000/= and two sureties of the same amount.
- (b) In the alternative, **James Wainaina Mburu** shall be released on cash bail of Kshs.2,000,000/= (two million).
- (c) James Wainaina Mburu is granted bail/bond as above on condition he will not contact or interfere with prosecution's witnesses.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 10TH DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant Ndege

Applicant/accused: Present

Respondent/prosecutor: Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE