



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E009 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

BENJAMIN OKWARIGNA AKOL.....ACCUSED

RULING

1. **BENJAMIN OKWARIGNA AKOL** is charged with the offence of murder contrary to **Section 203 as read with Section 204** of the Penal Code. He has applied to be released on bail.

2. I have the probation pre-bail report. It reveals accused is 24 years old. He is single. He is a Uganda national. The accused failed to reveal contacts of his family in Uganda and consequently the probation officer was unable to get further details of his background.

3. **Article 49(1)(h)** of the Constitution provides that an arrested person has the right to be released on bond/bail on reasonable conditions pending charge or trial unless there are compelling reasons not to be released. The primary consideration for granting bail is to ensure an accused does attend his trial. In the case **GRACE KANANU NAMULO VS. REPUBLIC (2018 ECLR)**, that consideration was discussed thus:-

*“17. I associate myself with the view expressed by Muriithi, J in **KELLY KASES BUNJIKA VS REPUBLIC (supra)** that:-*

‘It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his “constitutional right to be granted Bond/Bail on reasonable and favourable terms.”’

4. The fact that the accused is a foreigner is not necessarily a reason to deny the accused bail. This was so stated in the case **ERICK RAMAZANI V. REPUBLIC (2020) eCLR** thus:-

*“In **REPUBLIC VS RICHARD DAVID ALDEN [2016] eCLR**, Lesiit, J held thus in relation to an application for bail which had been made by a foreigner:-*

‘28. I agree that a paramount issue for determination, in considering an application for bail is whether the accused person will avail himself for trial if admitted to bail. I also agree that an accused not being a citizen poses a special challenge to the court, but that is not to say that non-citizens cannot enjoy the rights to be released on bail as enshrined in our Constitution. Art.49(1)(h) is not of limited application and the only condition set there under is a proof of compelling reasons to deny bail. The mere fact the accused is not a Kenyan is not per se a ground to deny bail.’”

5. Bearing the above in mind, I will grant accused bail.

DISPOSITION

6. I grant **Benjamin Okwaringa Akol** bond of Kshs.1million with two **Kenyan** sureties of Kshs.2million each.

RULING DATED and DELIVERED at KIAMBU this 6th day of JULY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Accused: Present

For Accused: Ms. Njagi

DPP: Ms. Kathambi

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE