



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.E032 OF 2021

EMANUEL EMBUKA BOGE.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING ON BAIL

1. The Application coming for consideration In this ruling is dated 21/6/2021 seeking for orders that this court admits the Accused person to favourable bail or bond terms pending the hearing and determination of this case.

2. The Accused person was charged with murder contrary to section 203 as read with section 204 of the Penal Code in that on 13/2/2021 at **BARRIER** village, **CHAIK** sub-location BELGU sub county within KERICHO county, the Accused person with others not before court murdered **EMMY CHEMUTAI**.

3. The parties filed written submissions in the Application which I have duly considered. The Accused person submitted through his Advocate as follows;

i. THAT the Accused person is a tea plucker at James Finlay Company Kaproret Estate.

ii. THAT the Accused person is married man with four children who lives at Nyaera village in Migori County from where the Accused person hails.

iii. THAT the Accused person has constitutional right to be admitted to reasonable bail unless there are compelling reasons not to grant him bail.

iv. THAT the probation officer's report which stated that the Accused does not have a fixed abode is not foolproof.

v. THAT the Accused person who hails from Migori County, Suna East Sub County, Osingo location, Osingo sub location, Nyaera village where he resides with his wife and children and is not a flight risk.

4. The prosecution opposed the bail application and submitted in writing as follows;

i. THAT the Accused person was cohabiting with the deceased at the time she went missing.

ii. THAT her decomposed body was exhumed from a shallow grave at a swampy thicket near Kapsongoi covered with fresh nappier grass.

iii. THAT the Accused person was arrested at Transmara west sub-county where he had fled after committing the said offence.

iv. THAT there are compelling reasons not to commit the Accused person to reasonable bail in that the Accused person is a potential flight risk.

5. Upon considering the rival submissions filed herein, I find that there are compelling reasons not to grant the Accused person bond in that he is a potential flight risk.

6. The High Court in *Watoro versus Republic, (1991) eKLR*, stated as follows: **“I think I have made it clear over a number of rulings in bail applications that I take the view on authority that the paramount consideration in bail applications is whether the accused will turn up for his trial. The seriousness of the offence in terms of the sentence likely to follow a conviction has been held repeatedly to be a consideration in exercising discretion.”**

7. Further, Justice Muriithi in *Kelly Kases Bunjika versus Republic, (2017) eKLR* stated as follows **“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 person is likely to fail to attend court proceedings”.”**

8. I find that the prosecution had demonstrated that the Accused person is likely to fail to attend court and I accordingly dismiss the Application dated 21/6/2021 and direct that the Accused person be remanded in custody until this case is heard and determined.

9. Since the pretrial conference has been held and the case is ready for hearing, the hearing will be on 6/12/2021.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 5TH DAY OF NOVEMBER, 2021

A. N. ONGERI

JUDGE