



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 10 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

SIMON KIHARA MUNGAI.....ACCUSED

R U L I N G O N B A I L

1. On the 13th February 2018 the accused herein was charged with **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. It was alleged that on 11th February 2018 at Mukinyai Village Mutamaiyo Location in Molo Sub County within Nakuru County murdered Mary Nyanjau.
2. Plea was taken on 27th February 2019, where he responded to the charge as follows;

“It is true that I killed her but I did not intend to kill her.”
3. On 23rd July 2019 he was granted bond of Kshs. 300,000/= with one surety of the same amount.
4. I took over the matter on 8th October 2019 to date. It has never taken off.
5. I asked for Bail Assessment Report from Probation and After Care Services (PACS). It was filed on 13th September 2021. The family of the victim are opposed to the accused being released on bail, because of the burden that was left on them taking care of the deceased's children. The father of the accused together with his brother, have offered themselves to stand surety for the accused.
6. The accused does not have a criminal record, is not a flight risk and except for his anger, the chief did not have any adverse reports against him. He is not a threat against the victim's family as they live far off in Turi, Molo Sub County while his home is in Mutamaiyo.
7. His mental assessment report came back with an assessment being mentally unsound and was found to be suffering from a psychotic disorder, mild mental retardation and recommended for admission and treatment in a psychiatric chit.
8. A follow up report dated 13th September 2018 indicated he was unwell, plea was taken.
9. However the illness did not go away because every so often he was said to be unwell. On 22nd February 2021 he was said to be undergoing treatment for psychiatric problems. He was absent on 5th March 2021, 18th May, 2021, 8th June 2021 and 16th August 2021 on account of the psychiatric illness.
10. While it is the right of the accused to be released on bail, it is also clear that he suffers from a mental illness for which he is undergoing treatment while in custody. It is unfortunate that the Probation Officer did not speak about this, and the manner in which the family was going to manage the same. It is not clear whether this mental illness contributed to the committal of the offence or it makes him a danger to himself and society.
11. While the accused may be released on bond, I think it is necessary for the Probation Officer to speak to the accused person's mental illness and family preparedness to deal with the same. For this reason, I find that though the report is helpful with respect to the family, readiness to receive him back, there is no assessment of his needs for treatment.
12. To that end the PACS report is not very helpful, and it is only proper that the Probation Officer goes back to the family and the

community and address this particular issue.

Dated, Signed and Delivered this 5th day of November, 2021.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

Ms Murunga for state

Accused present virtually

Mr. Ndungu – Probation Officer