



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**CRIMINAL CASE NO. 22 OF 2020**

**STEPHEN MWANGI MWAURA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The accused person who is the Applicant herein was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that of the 19<sup>th</sup> day of December, 2015 at Kitiri location in Nyandarua South Sub-County within Nyandarua County, unlawfully killed Purity Waithera Mwangi.
2. The accused is represented by learned Counsel, Mr. Gachiengo who made an oral application that the accused be released on bail or bond consequent which the court ordered that a pre-bail report be filed. The learned Prosecutor, Ms. Maingi had no objection to the release of the accused person on bail/bond subject to the recommendations in the Pre-bail Report.
3. Before stating the content of the Pre-Bail Report, it is paramount that I underscore that the right of an arrested person under **Article 49 (1) (h)** of the **Constitution** to be released on bail is non-derogable. The Article states that an arrested person has the right to be released on bond/bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.
4. Case law has variously settled what constitutes compelling reasons to include the likelihood of an accused person to abscond, the seriousness of the offence and the attendant sentence, the security of the accused, the likelihood to interfere with prosecution witness, the antecedence of the accused and the interest of justice. (See **Fadweck Mvahe v The Republic, MSCA Criminal Appeal No. 25 of 2005**).
5. It must however be borne in mind that the onus lies with the prosecution to demonstrate the existence of the compelling reasons. In this case, none has been tendered before the court.
6. Further, the court has had a look at the Probation Officer's Report dated 16<sup>th</sup> August, 2021 filed by Joel Kamau, Officer In-Charge Probation Office, Naivasha Sub-County. He was able to interview the relatives of the deceased who were opposed to the accused being released on bail citing amongst other reasons that the accused was a flight risk having worked outside the country for a long time, that he is likely to interfere with prosecution witnesses, that they felt insecure having even recorded statements at Kasarani Police Station, that the suspect's son had had attempted kidnap incidents and in any event, this child is a key witness against the accused.
7. To the contrary, the accused family members spoke positively of him stating that he was a senior

citizen having retired from the military both locally and internationally. They promised to ensure that he attends court at all times. The views of the community were reflected by respectable elders and the Chief. They described the accused person as peace loving citizen though reserved. The Chief was of the view that he had very low chances of absconding and was therefore not a danger if he is released on bond.

8. The conclusion made by the Probation Officer is that the accused is not a flight risk on account that, apart from being a senior citizen, he has a fixed abode. Furthermore, his immediate family and the community moots for his release. That in any event, his brother one Gerrison Mwaura is willing to deposit a title deed as security in view of his release.

9. I have considered the case and more so the information borne in the Pre-Bail Report. The paramount consideration for release of an accused on bail/bond is the assurance of his attendance in court once granted the bail.

10. The circumstances of this case demonstrate that there is entirely no reason advanced to compel the court to deny the accused bail/bond. It has been demonstrated that he is not a flight risk. Of course, the family members of the deceased have their fears. However, it is the duty of the court to ensure that the constitutional right of an accused person are jealously guarded.

11. Consequently, the application for release of the accused on bond must succeed. I order that the accused be released on a bond of Kshs 500,000/= with one surety of a similar amount. The surety must be Gerrison Mwaura, the brother to the accused person who shall deposit his own title deed and shall be assessed by the Hon. Deputy Registrar of this court. In the alternative, the accused may deposit a cash bail of Kshs 500,000/=.

12. It is so ordered.

**DATED AND DELIVERED AT NAIVASHA THIS 11TH DAY OF NOVEMBER, 2021.**

**G. W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

*1. Mr. Gachiengo for the Applicant*

*2. Ms. Maingi for the Respondent*