



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E006 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

BONIFACE WANJOHI MACHARIA.....ACCUSED

RULING

1. **BONIFACE WANJOHI MACHARIA** is charged with the offence of murder contrary to **Section 203 as read with 204** of the Penal Code. He pleaded not guilty and made an application to be released on bond/bail pending his trial.
2. The probation and aftercare services prepared a pre-bail report. That report reveals that the accused is accused of murdering his grandmother. As a result, majority of the witnesses are accused's family members. The report also shows that some family members are against the accused being released on bail whilst others are in support. The local administration stated that the community is still bitter with the accused and there is the real likelihood that he may be lynched by the public if released on bond/bail.

ANALYSIS

3. Although an accused person has a right to be released on bond/bail on reasonable condition, such release is at the discretion of the court. This is what was stated in the case **REPUBLIC VS. MILTON KABULIT & 6 OTHERS (2011) eKLR** as follows:-

“My understanding of Section (sic) 49 (1) (g) (h) is firstly, that the right of an arrested person to bond or bail in respect of any offence is solely at the discretion of the court seized of the application. Secondly, the only accused entitled to a right to an automatic bond or bail are those charged with offences (which may be referred to as “petty offences”) the punishment of which if found guilty and convicted) is either a fine only, or imprisonment for a term of less than six months”

4. There is also need to consider the provisions of **Section 123A (1)** of the Criminal Procedure Code. It provides:-

“123A.

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding Section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person:-

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to

conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection. (underlining mine)

5. It will be noted that that Section requires the court to consider relevant circumstances such as nature or seriousness of the offence and to bear in mind whether the accused needs to be kept in custody for his protection.

6. Having considered the constitutional provisions of and **Section 123A** and the pre-bail report, I find and hold that the accused needs to be kept in custody for his own protection. The application for bail is therefore declined.

7. In this regard, I cite with approval the holding in of the case of REPUBLIC VS. FREDRICK OLE LELIMAN & 4 OTHERS (2016) eKLR as follows:-

“... whereas the applicant is still presumed innocent; if he were to be convicted for murder, there is a possibility that the trial court could sentence him to death. To my mind, therefore, the severity of the sentence remains a significant factor for consideration in an application for bail pending trial.”

8. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For DPP :- Ms. Kathambi/Kasyoka

For Accused :- Mr. Marube

Accused : **BONIFACE WANJOHI MACHARIA**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE