



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. E027 OF 2021**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FRANKLINE MUTHIANI MUNYAO.....ACCUSED**

**RULING**

1. **FRANKLINE MUTHIANI MUNYAO**, is charged with the offence of murder contrary to **Section 203 as read with Section 204** of the Penal Code. He pleaded not guilty. It is yet to commence.

2. **Article 49(1)(h)** of the Constitution provides that an arrested person has a right to be released on bond or bail on reasonable conditions unless there are compelling reasons not to be released. It will be noted that the said Article has built, within its discretion which is given to the court in consideration of bond/bail. *Justice Emukule* (as he then was) stated the same in the case **REPUBLIC VS. MILTON KABULIT & 60 OTHERS (2011) eKLR** thus:-

**“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”**

3. The primary consideration in the deliberation, of an application for bond/bail is whether the accused will attend court if he is released on bond/bail. No evidence was provided to show that the accused would fail to attend court.

4. It is however important to state the seriousness of the offence is a fact to be considered and this is what was stated in the case **REPUBLIC VS. AHMED MOHAMMED OMAR & 6 OTHERS (2010) eKLR** thus:-

**“... 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.”**

**DISPOSITION**

5. Bearing in mind the above, I grant the following orders:-

a. **FRANKLINE MUTHIANI MUNYAO** is granted bond of Kshs.2 million with two sureties of similar amount.

b. **FRANKLINE MUTHIANI MUNYAO** shall not interfere with the prosecution witnesses.

6. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 9<sup>TH</sup> DAY OF DECEMBER, 2021**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Maurice

For DPP :- Mr. Kasyoka

For Accused :- Mr. Kalwa

Accused : **FRANKLINE MUTHIANI MUNYAO:-**

**COURT**

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**