



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 44 OF 2019

REPUBLIC PROSECUTOR

VERSUS

MOSES MUASYA MUANGE1ST ACCUSED

JOHN NDWAI MAIMBU.....2ND ACCUSED

RULING

1. The accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which are that on the night of 25th day of June, 2019 along Valley Road in Kilimani Area within Nairobi County, jointly murdered **FLORENCE MUTHONI WANJIRU**.

2. They pleaded not guilty to the said charges on 15/8/2019 before Justice Mumbi, who directed that they both make their application for bond before the trial court and by an application dated 14/10/2019, the applicants sought to be admitted to bail on reasonable terms pending the hearing of the cause, which application was supported by an affidavit sworn by Mr. David Gikunda Miriti their Advocate on record, in which it was deponed that they were willing to abide by any terms set out by the court in granting bail. It was contended that they were both law abiding citizens who when summoned by the police before their arrest voluntarily answered to the said summons.

PRE-BAIL REPORT

3. The court ordered for pre-bail reports which were filed in respect of the accused persons; on behalf of the 1st accused, it was stated that the same dropped out of school after class 8 and moved to Nairobi in the year 1990 and engaged in casual jobs until 1998 when he joined the matatu industry. He is married with four children and is the sole bread winner for his family. At the time of the report, he was suffering from severe ulcers and a fractured arm after a fall while in remand prison both condition which required specialized treatment. He pleaded for affordable bond terms so as to continue providing for his children who were likely to drop out of school. His former employer was willing to post bond for him.

4. On behalf of the 2nd accused it was reported that the same is a trained pastor and worked as such at Gospel Fathering Bible church between 1997 – 2014 before moving to Nairobi in 2014 where he joined the Matatu industry but on Sundays would travel to Mwingi for church service as at the time of arrest. He is married with three children in form four, form two and standard seven while his last born is five months old. He is known to his local Administration and the head of his church.

5. On the Victim impact statement it was stated that she was the eldest child in her family aged twenty eight (28) years, with a degree in Human Resource, who had obtained a job as a waitress and was planning for her wedding in December of 2019. The family who had placed all their hope on her to provide for her younger siblings were yet to come to terms with her death. It was concluded that after the commission of the offence, the accused persons allegedly ran away from the scene and fled to their rural home before arrest and were likely to abscond if released on bond and will intimidate the witness who might fear the repercussions of testifying against them.

6. At the hearing of the application Mr. Okeyo for the prosecution stated that they did not have objections to the accused person being released on bond and further stated that the Counsel watching brief for the family was also not opposed to their released. Miss Chepkorir submitted that the accused persons did not run away but presented themselves to the police and will attend court throughout the trial.

ANALYSIS AND DETERMINATION

7. Whereas the issue of whether or not to release an accused person on bond as per the provisions of **Article 49(1) (g) (h)** is a judicial function, the rights under the said provisions of the constitution as read together with **Article 24** and **25** thereof will only be limited where

there are compelling reasons to be advanced on a balance of probability by the prosecution. What constitute compelling reasons have been captured in the Bond and Bill Policy Guidelines as well as several judicial pronouncements as captured by **Justice M K IBRAHIM** (as he then was) in **REPUBLIC v MGUNYA & ANOTHER (2011) eKLR**.

8. In this matter there is no compelling reasons advanced and those captured in the pre-bail report through the victim impact statement, which includes an allegation of the possibility of interference with witnesses have not been substantiated. Further, even if they were, the same may adequately be mitigated for by appropriate bond terms and conditions. It is therefore clear that there are no compelling reasons to enable to deny the applicants the enjoyment of their constitutional right to bail/bond.

9. Having found no compelling reasons, the next issue for determination is what constitutes reasonable bond terms. Whereas the accused persons are at this stage presumed innocent until proven guilty, the reason for bond remains that of securing their attendance at their trial as stipulated under Section 124 of the Criminal Procedure Code. The accused persons are charged with the offence of murder wherein one of the sentences available upon conviction is possibility of death. The court must take this into account while setting up bond terms so as to ensure that it is not easy for them to abscond bail should they in the course of trial feel that the evidence availed by the prosecution might lead to their conviction. See **PRICILA JEMUTAI KELONGEI v REPUBLIC Criminal Application No. 319 of 2003**.

10. Justice F. Gikonyo in **REPUBLIC v KOKONYA MUHSSIN [2013] eKLR** granted bail at Kenya shillings one million (1,000,000) in respect of an accused person who was charged with murder, while Odinga, J, in the case of **GRACE KANANU NAMULO v REPUBLIC [2019] eKLR** was of the view that Kenya Shillings five hundred thousand (Kshs.500,000) was reasonable. Having taken into account the material provided to court through the supporting affidavit and pre-bail reports, I am of the considered opinion and find that a bond of Kenya shillings five hundred thousand (Kshs.500,000) is very reasonable for each of the accused persons.

11. The accused persons may therefore each be released on the following terms and conditions:-

a) A bond of Kenya shillings five hundred thousand (Kshs.500,000) with one surety of similar amount.

b) In the alternative cash bail of Kenya Shillings two hundred and fifty thousand (Kshs.250,000) with two sureties of similar amount.

c) The accused persons shall not make any contact with any of the prosecution witnesses in whatsoever nature, unless it is done in the presence of the investigating officer and Advocate watching brief for the family.

d) They shall report to the investigating officer in this case once after every sixty (60) days until the final determination of this cause and or upon review by the court.

Dated, signed and Delivered at Nairobi this 13th day of February, 2020.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Okeyo for the State

Mr. Chepkorir for Musyoka for both accused persons

Both accused persons present

Court clerk: Karwitha