



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 51 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KARANJA NDIRANGU.....ACCUSED

R U L I N G (Bail)

1. The accused person is charged with **Murder Contrary to Section 203 as read with 204 of the Penal Code**. The particulars are that on 2nd November, 2019 at Total Trading Centre, Kuresoi North Sub-County within Nakuru County he murdered Phylis Waitthera Kariuki, who is said to have been his wife and mother of their five (5) children.

2. The accused applied for bail and the state raised no objection save to seek that the Pre Bail Report be availed. The same was filed on 25th February, 2020. The question then is, are there any compelling reasons to deny the accused bail.

3. The pre bail report raises issues of the accused's personal security if released on bail, stating that on the ground the community was not prepared to have him back because the incident had created hostility towards him, and that he had a pending criminal case, **Molo Criminal Case Number 869 of 2019 for Possession of bhang and illicit brew**. That the secondary victims were not ready to mingle with him, and if granted bond he would have to stay away from the place where the offence happened.

4. I have carefully considered the pre bail report. Bond is a constitutional right which will only be denied if there are compelling reasons as stated by **Article 49 (1) (h) of the Constitution**, an accused person has the right ***to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.***

What constitutes compelling reasons is now trite to include the following; see **Republic v David Muchiri Mwangi [2018] eKLR**

i) The nature of charge.

(ii) The strength of the evidence which supports the charge.

(iii) The gravity of the punishment in the event of conviction.

(iv) The previous criminal record of the accused if any.

(v) The probability that the accused may not surrender himself for trial.

(vi) The likelihood of the accused interfering with witnesses or that he may suppress any evidence such as incriminating him.

(vii) Likelihood of further charges being brought against the accused.

(viii) The probability of a finding of guilt.

(ix) Detention for the protection of the accused.

(x) The necessity to procure a medical or social report pending the disposal of the case.

(xi) Accused persons own safety, security and protection –.

(xii) If the accused person is likely to pose public danger by being released on bail.

(xiii) If by releasing the accused on bail public confidence in the administration of justice will be dismissed.

(xiv) The character antecedents, associations and community ties of the accused person.

5. In this case the compelling reason placed before me is the accused person's own security. It has also been stated that it can be mitigated by the accused person not returning to the place where offence was committed. The accused person's home is said to be Tayari Village in Molo Sub County, the offence happened at Total Trading Centre Mau Summit where he was living with the deceased. Hence he would still stay at home without going to Mau Summit.

6. None of the other compelling reasons for instance interfering with witnesses or absconding from the jurisdiction of this court has been identified.

7. Hence I find no reason to deny the application. The same is allowed in the following terms.

a. He may be released on bond of Ksh. 300,000/= with surety of similar amount.

b. Conditions:

i. Accused stay away from Total Trading Centre itself and Mau Summit Sub-location as a whole until the hearing and determination of this case. In default the bond may be cancelled.

ii. He will not visit or try to see the children until the case is heard or without directions of the Court

c. The Deputy Registrar to examine the surety for approval.

d. The Condition (b) be made clear to the surety.

e. Upon release on bond accused to appear in court as and when required to do so until the matter is heard and finalized.

Dated at this 12th day of March, 2020.

Delivered and signed at Nakuru this 9th Day of April 2020

Mumbua Matheka

Judge

In the presence of: Via ZOOM

Edna Court Assistant

Ms. Mburu for state

Mr. Yogo for accused

Accused Present