



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL (MURDER) CASE NO. 34 OF 2019**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**PETER KURIA NJOROGE.....ACCUSED**

**RULING (BAIL)**

**Background**

1. Vide an information dated 7<sup>th</sup> August 2019, Peter Kuria Njoroje, the accused herein is charged with the offence of **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars are that:

*On the 31<sup>st</sup> of July 2019 at Limuru Farm, Subukia Sub County within Nakuru County Murdered Mary Wanjiru Njoki.*

2. He appeared in court on 8<sup>th</sup> July 2019 for the first time but for various reasons; mental assessment report not being ready, accused not allocated counsel, plea could only be taken on 20<sup>th</sup> November 2019. He pleaded not guilty and Ms Chepng'etich appearing for him applied for bail. The prosecution raised no objection save that a Pre bail report be sought from the Probation and After Care Department. The report was filed on 18<sup>th</sup> December 2019.

**The Pre Bail Report**

The Bail and Bond Policy guidelines define a bail report as

*- A social inquiry report based on information generated about the background and community ties of an accused person, and its purposes are to verify information provided to the court by the accused person, to assess the likelihood that the accused person will appear for trial, and enable the court to impose reasonable bail terms and conditions.*

It further cautions that

*The bail report shall only contain information that will assist the court to make a fair decision on whether or not to release the accused person on bail.*

As I have mentioned else where it is time did something was done by the Department of Probation and After Care Services Nakuru to ensure that their reports presented to court can be authenticated. The report I have before me is simply headed 'Republic of Kenya' 'Pre-bail Report'. You cannot tell its source. No address, no office contacts, no official stamp, no reference or serial number. Its source is unknown save for a signature and name and the words 'Probation Officer Molo' at the bottom.

The report simply states that;

*the Accused person's father though having been informed of the requirements of standing surety for the Accused to give him a chance to be out of remand, he stated that he could not give out his title deed neither the log book nor payslips to stand as surety for the Accused person.*

The other parameters of the pre bail report were not addressed. It leaves the begging question whether a social inquiry was conducted or not. For instance an issue of importance: the views of the victims if the accused was to be released on bond, which is a statutory requirement, whether the accused was a flight risk, the feelings of the community etc.

## **Analysis and determination**

3. The right to bail does not depend on the immediate availability of a surety. One could show up later, and there are offenders who get other bail terms.

4. Just to restate in; the case of **Republic v Fredrick Ole Leliman & 4 others [2016] eKLR** Lesiit J, stated as follows:

*There is no dispute that bail is a right to all persons charged before court irrespective of the charge facing them. The only rider under Article 49(1 h) of the Constitution is that bail should be granted unless there are compelling reasons not to release an accused person on bail.*

*The principles set out under the Bail and Bond Policy Guidelines I have been referred to are the same ones that were set out in the celebrated case of **Ng'ang'a Vs Republic 1985 KLR 451** where Chesoni J, as he then was thus:*

*“The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should grant bail to the accused person unless it is shown by the prosecution that there are substantial grounds for believing that:*

- i. The accused will fail to turn up at his trial or to surrender to custody;*
- ii. The accused may commit further offences; or*
- iii. He or she will obstruct the course of justice.*
- iv. The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;*
- v. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;*
- vi. The strength of the prosecution case;*
- vii. The character and antecedents of the accused;*
- viii. The likelihood of the accused interfering with prosecution witnesses.”*

5. *Wakiaga J*, in the case of **Republic v Joseph Kuria Irungu & another [2018] eKLR** stated as follows:

*“To this list I would add that the court ought to look at the impact which the grant of bail might have upon the conduct of the case and the need to further balance between the liberty and interest of the accused and the interest of the society in denying bail.”*

6. A pre bail report comes in handy in providing the information about family and community ties, the views of the victims etc. including fleshing out the above parameters for the requesting court. These are absent in this report.

7. Hence, the court is left frustratingly where it was without the report.

8. Since there was no objection to bail, the accused may be released on bond of Ksh 300,000 with one surety of the same amount or two sureties each of half the amount.

9. The Surety(ies) to be approved by the Deputy Registrar

10. The Accused to attend court at all times as required by the court.

11. Orders Accordingly.

**Dated, delivered and signed this at Nakuru 9<sup>th</sup> day of April, 2020.**

**Mumbua T Matheka**

**Judge**

In the presence of: Via Zoom

Edna Court Assistant

Ms Mburu for state

