



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 4 OF 2019

REPUBLICPROSECUTION

VERSUS

ELIJAH GITHUI MAINA.....ACCUSED

RULING.

1. Vide the information dated 3rd April 2019 the accused person **ELIJAH GITHUI MAINA** is herein charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the 12th day of March, 2019 at Embassy Shopping Centre, in Nyeri Sub-county, within Nyeri County in the Republic of Kenya he murdered WINFRED WANJIRU WANYOIKE.

2. The charge was read to him and he pleaded not guilty on 3rd of April 2019

3. When the matter came for pre-trial on 16th of April of 2019 the prosecution raised objections to bail seeking that the accused remain in custody during the period of trial on the following grounds. That: -

I. The accused is a casual employee, his employment is indefinite and he may abscond,

II. That he does not have a permanent residence he was accommodated by the deceased

III. At the time of his arrest, he was observed by officers at the police station to be interfering with his wound, he may be contemplating to complete the suicide.

IV. That the defence was already aware of the weight of evidence having been supplied with the witness statements and there was likelihood of absconding

V. That the nature of the offence being serious would pose temptation to abscond

4. Mr. Ng'ang'a appeared for the accused person. He submitted that bail is a constitutional right and that a person is innocent until proven guilty. That the appearance of poverty should not be a reason to deny a person bond, that there was no evidence that the accused was living with the victim or any affidavit evidence that he had attempted suicide. That accused was arrested at the scene and had also sustained injuries.

5. I sought a pre-bail report on the accused which was filed on 7th May 2019 by L.K Wanjohi Probation Officer, Ref No. NYR/PS/PRE/1/266. The report outlined the persons interviewed, to include the accused's parents, employer, views of the community through, the local administration and the mother of the deceased.

6. The report was perused by both the Prosecution and the counsel for the accused person. Ms. Gicheha for the state submitted that she would go by the report and especially the recommendation by that in the event bond was granted, he should stay away from Nyeri Town for his own Security.

7. The probation officer was of the view that due to his family ties he is no flight risk. That his father is ready, willing and able to stand surety on his behalf.

8. The offence was committed in his home area where the deceased was employed. Those interviewed in the community cited no risk if he is granted bond. However, the former employer of the deceased raised a security concern that the suspect should avoid Nyeri town where the

deceased worked. The area assistant chief and the village elder did not object his release on bond. The deceased's mother objected his release on bond. At the place where he was working, Mwenji Catholic Parish they are ready to receive him back at the parish once bail is granted.

9. Bond is a constitutional right which will only be denied if the prosecution establishes compelling reasons.

10. The prosecution submitted two reasons as to their objection to the accused's release, and the defence submitted that they were not supported by evidence or affidavits and cannot therefore be relied upon.

11. The Victim Protection Act 2014 seeks to provide for the protection, rights and welfare of victims of offences and as far as it is concerned in relation to bail decision making;

(a) It imposes a duty on the courts to "ensure that every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken" and

(b) It gives victims of crime the right "to have their safety and that of their family considered in determining the conditions of bail and release of the offender.

The deceased's mother is in objection to the accused's release on bail because she was affected by the death of her daughter and she had not healed from the same. She would have preferred that the accused remain in custody during trial. However, she lives in Kiambu County and there is no likelihood that she will bump into the accused in the streets of Mwenje Parish where the accused is expected to be living.

12. Grounds upon which bail may be refused include:

i. Risk that the accused will fail to appear for trial if they are released on bail;

ii. Risk that the accused will interfere with the course of justice while on bail (e.g. that he will destroy evidence that could be used against them at their trial or that they could interfere with witnesses who are due to give evidence at their trial);

iii. Risk that the accused will commit further offences while on bail;

iv. The accused would be at risk of harm (from himself/herself or from others) against which they would be inadequately protected if released on bail; or

v. Risk to the preservation of public order if the accused is released on bail.

13. None of the above was established.

14. The accused has a fixed abode, has family and community ties, strong enough, on the face of the PBR to hold him in place during the trial, the seriousness of the offence notwithstanding.

15. Hence there are no compelling reasons to deny bail and therefore I order that;

i. The accused may be released on bond of **Ksh. 500,000/ with one surety** of a similar amount;

ii. Upon release, for his own safety, he is to avoid Nyeri town.

iii. That the surety shall be approved by the Deputy Registrar of this court. To include a recent full photograph of the accused person.

iv. That the accused must attend all mentions and hearing dates as may be fixed from time to time during the pendency of this case or when required by the court unless such attendance is dispensed with by the court.

Dated, delivered and signed at Nyeri this 17th day of May 2019.

Mumbua T Matheka

Judge

In the presence of:-

MS MIRITI FOR NG'ANG'A FOR ACCUSED PERSON

ACCUSED PRESENT

MAGOMA for state

JERUSHA Court assistant

Mention on 4th June 2019 for pretrial.

Judge