



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 5 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

PAUL MUGO MUTAHI.....ACCUSED

RULING

1. The accused person **PAUL MUGO MUTAHI** is charged with murder contrary to section 203 as read with section 204 of the Penal code. The particulars are that on the 11th day February, 2019 at Kianganda village, Kihuguru Sub Location Othaya Township in Nyeri South Sub-county, within Nyeri County in the Republic of Kenya he murdered JOSEPH MUGO MUTAHI.

2. He pleaded not guilty on the 24th of April 2019.

3. When the matter came for pre-trial on 24th of April of 2019 Mr. Kinuthia appeared for the accused person. He made an application for the accused's release on bail or bond terms. He submitted that the accused had undertaken to appear in court as and when required and hence is not a flight risk; that the accused has a known permanent abode and permanent employment as a vendor in Othaya town.

4. The prosecution did not have any objections to the application

5. I sought a pre-bail report on the accused which was filed on 8th May 2019. The report outlined the persons interviewed, the views of the community, the investigating officer, the local administration and those of the victims.

6. The probation officer was of the opinion that due to his family ties the accused was not a flight risk and various relatives are willing to stand surety on his behalf.

7. The deceased's mother, who is also the accused's wife, objected his release on bail.

8. 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.

9. The victim's mother, who is the accused's wife is in objection to the accused's release on bail, she however did not elaborate on her reasons for objection. It is not clear to the court what her reasons are. However, the report shows that she relocated to Nakuru where she lives with her parents. However, the report has serious gaps. For instance, it says the accused is 20 years old, yet he has a 4 year old child. did he get married at 15? What is the age of the victim? Why does the wife object to his release on bond? This is information that ought to be on record. Nevertheless the prosecution is not opposed to bail or bond and therefore,

10. The following orders issue: -

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

ii. That the sureties shall be approved by the Deputy Registrar of this court.

iii. 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.

Signed, Delivered and Dated at Nyeri this 17th day of May 2019.

Mumbua T Matheka

Judge

In the presence of:

Jerusha: Court Assistant

Mr. Magoma for state

Accused person

N/A for Mr. Kinuthia for accused

Mr. Muchuku Probation Officer

Court: The Probation Officer to avail a further report covering the gaps pointed out by court.

Mention on the 5th June 2019 for pre-trial. Mr. Kinuthia be served with Mention Notice.

Judge