



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 28 OF 2019

LESITT, J

REPUBLIC.....PROSECUTOR

V E R S U S

ANTONY MUTAHI WANJIRU.....ACCUSED

RULING ON BAIL

1. The accused was arraigned in court on 16th May, 2016 facing one count of murder contrary to **Section 203** of the **Penal Code**. Plea was not taken until 11th June, 2019 due to delay in having the Mental Assessment done.
2. On 9th July, 2019 when the case came up for fixing of Pre-Trial Conference dates, the defence Counsel Mrs. Owino, applied for accused release on bail or bond.
3. The State through Learned Prosecution Counsel Ms. Onunga indicated that the State was not opposing bail. Counsel urged that the accused be made to make an undertaking that upon his release he will not interfere with witnesses and especially the minor witness in the case and further that he should undertake that he will attend court. Learned Prosecution Counsel sought that the court be informed where the accused fixed place of abode was.
4. Mrs. Owino for the accused in oral submission urged that the accused has been in custody since April, 2019. Counsel urged that the accused had a fixed abode in Nairobi where he lives with his mother and siblings. She urged that the accused was committed to appear in court when required and promised not to interfere with witnesses.
5. Mrs. Owino asked the court to give reasonable bail and bond terms urging that the accused came from a poor background and that his mother was a vegetable vendor. Counsel urged that the accused did not have any travel documents. Counsel urged that the accused ran a modest cyber cafe in Dandora where deceased was lynched by a mob.
6. I have considered the application by the defence. I have considered the undertakings made by the defence counsel on behalf of her client including his commitment to attend court, his pledge not to interfere with witnesses including the witness who is a minor.
7. The defence has urged court to grant bail on reasonable terms urging that the accused is from a humble background.
8. The primary consideration in an application for bail is whether or not the accused person will turn up for his trial. Given the prosecution's submission, this issue is not part of their concern. There is no worry of accused absconding, fleeing or failing to turn up for his trial. That leaves the court to consider the other minor issues which arise in this case.
9. The prosecution's concern is about interference with witnesses and accused place of abode. For the first issue raised by the prosecution, the court can impose conditions to reduce any incentive to interfere with the witnesses.
10. As for the second issue of the accused place of abode the accused can be required to give specific particulars of his place of abode and also his place of business.
11. I have come to the conclusion that the accused should be granted bail on reasonable terms. We have indication from the defence that he is from a humble background. We have been told he is a businessman running a modest cyber café. While his mother is a vegetable vendor.
12. Taking the accused means into account, this court will grant bail on the following terms and also require proper and better particulars as follows:

(1) The accused may be released on a cash bail in the sum of KShs.100,000/=.

(2) In the alternative the accused may be released on bond in the sum of KShs.200,000/= with one surety of like sum.

(3) The accused should provide better particulars of his actual place of abode and also place of his business to the Deputy Registrar.

(4) The accused is warned not to interfere with any of the witnesses in this case in the form of covert or overt action whether by himself or through others. He should not approach, call or visit, the potential witnesses in this case.

(5) The accused is warned to ensure he attends court if and when required.

(6) Failure to observe terms and conditions set in (3) (4) and (5) above will result in the bond being cancelled.

DATED AT NAIROBI THIS 10TH DAY OF JULY, 2019.

LESIT, J

JUDGE