



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 8 OF 2019**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**REUBEN MUCHAMI NDAUWA.....ACCUSED**

**RULING**

The accused herein, Reuben Muchami Ndaawa, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of this charge read that on the 14<sup>th</sup> day of January 2019 at Baraka Bucherty in Kinyago Slums Kamukunji Sub-County within Nairobi County, murdered Stephen Nyaga Mwangi. The accused pleaded not guilty. The case is scheduled to be heard on 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> December 2019.

On 24<sup>th</sup> June 2019 the accused filed an application of even date seeking to be admitted to bail pending the hearing and determination of this case. The application is brought under Articles 19, 20, 21, 22, 49 and 50 of the Constitution of Kenya and all other enabling provisions of the law. It seeks to have the accused released on bond or bail on reasonable conditions. It is supported by grounds found on the face of the application and on the submissions made in court. The grounds in support are that the offence of murder is bail-able under the Constitution of Kenya; that the accused has a qualified constitutional right to be released on bond or bail on reasonable conditions; that the applicant has unqualified right to be presumed innocent until the contrary is proved; that the applicant will avail himself and attend the trial until this case is fully determined and that the applicant's family reside in Kenya.

In his submissions in court, Mr. Marube for the accused told the court that the prosecution has not served the defence with a replying affidavit advancing compelling reasons to persuade the court not to grant this application. He submitted that there is no opposition to the application and urged that this court grants the same.

The prosecution has not filed a Replying Affidavit. However the prosecution opposed this application. It was submitted in opposition that the right to bail is not absolute or automatic; that it can only be enjoyed with other rights which have limitations; that the court must address its mind on the nature of the offence, the antecedents of the accused, the penalty to be meted out and the propensity of the accused to interfere with witnesses. It was submitted that the report by the probation officer is not conclusive and that the family of the accused may not be able to provide security for his release and therefore this court cannot admit the accused to bail/bond where his attendance in court cannot be guaranteed. It was further submitted that if this court finds merit in the application and releases the accused on bond/bail, then it should set such conditions that would make it possible for the accused to attend court.

This court called for a pre-bail report. The report, dated 12<sup>th</sup> September 2019, was filed on 16<sup>th</sup> September 2019. I have read the report. It is favourable and portrays the accused as a person of good character. It shows that the accused presented himself to the police after the incident relating to this offence. The only problem mentioned in the report is that the accused may not be able to afford bond as he may lack a surety since his family members are poor.

I have noted that the application is not supported by an affidavit. I have however considered the matter and find the report by the probation officer favourable. The only problem is that the accused may face difficulties in security a surety. I will however allow this application and set the conditions of the release of the accused on bond. If he is not able to secure a surety then he will remain in custody until he is able to secure one. I order that the accused is admitted to bond on the following conditions:

- (i) He will execute a bond of Kenya shillings eight hundred thousand (Kshs. 800,000) with one surety of that amount.
- (ii) He has the alternative of paying cash bail in the sum of Kenya shillings three hundred thousand (Kshs. 300,000) which shall be deposited with the Registrar of this court.
- (iii) He shall attend court at all times he is required to do so.
- (iv) He shall not interfere with witnesses.

Orders shall issue accordingly.

**Dated, signed and delivered this 17<sup>th</sup> day of October 2019.**

**S. N. Mutuku**

**Judge**