

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 6 OF 2018

REPUBLICSTATE

VERSUS

DAVID MUSYOKA KILONZO *alias* YAMBEUACCUSED

RULING

1. The accused herein is charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 7th day of December, 2017 at Kwa – kamba market, Kangundo sub-county within Machakos County murdered **YVONNE MBULUKU MUNYAO**.

2. The accused entered a plea of not guilty and a trial thus commenced which is still ongoing. The accused therefore remains innocent until he is proved guilty.

3. While the trial was ongoing, the learned counsel for the accused filed an application dated 12/06/2019 seeking that the accused be admitted to reasonable bail/bond pending the trial herein. The application is supported by grounds on the face thereof as well as the affidavit of the accused sworn on even date. The gist of the application is that the accused was married to the deceased with whom they have two young children. It is the accused's case that it is his constitutional right to be admitted to bail unless the state has compelling reasons not to be released. Finally, it was his case that he is ready to abide by conditions to be imposed by this court.

4. Mr. Machogu, learned counsel for the state did not oppose the application.

5. This court called for a pre-bail report from the Machakos County Probation Officer on the accused herein. The same was availed and is dated 1/8/2019. The same reveals that the accused is a person of good character with no previous criminal record. The community is not opposed to him being granted bond as he is an orphan since his parents are deceased and he has two siblings. The community is of the view that the two young children require the companionship of the accused. The local administration appears not opposed to the release of the accused on bond. However the family of the deceased are opposed to the release on the ground that he is a potential threat to his children.

6. I have considered the application as well as the pre-bail report. Indeed under Article 49(1) (h) of the Constitution an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released. Learned counsel for the state is not opposed to the application. The pre-bail report seems favourable to the accused's quest to be released on bond. The community and the local administration in general have no objection to the release of accused on bond. The accused is reported to have no past criminal record. Members of community and extended family members have agreed to stand as sureties as they confirm that he is not a flight risk and his places of abode are well known. Even though the family of the deceased appear to be opposed to the release on the ground of being a risk to the young children, I note that the pre-bail report has confirmed that the two young children have already been taken in by the Machakos Rescue and Remand Centre. The supposed fear therefore, does not arise anymore since the said Rescue Centre has solid terms and conditions regarding the safety and welfare of the children and that any matters of concern would easily be addressed by the Children Officer and Probation Officer once there is need for a visitation by the accused. Indeed the accused is now the only surviving parent to the two children who will need to link up with them as often as possible under the close supervision of the Machakos Children Officer.

7. In the result, I find merit in the bail application dated 12/06/2019. The same is allowed in the following terms:-

(a) The accused is released on bond of Kshs.1,000,000/= (one million) plus one surety of similar amount.

(b) The surety to be approved by the Deputy Registrar of this court.

(c) Upon release, the accused must attend court during the mention and hearing dates without fail until the final determination of the case or until further orders.

(d) The accused shall not interfere with the witnesses in any manner whatsoever during the pendency of this matter.

(e) In default to observe the above conditions, the bond terms shall stand cancelled and the accused together with his surety called to account.

Orders accordingly.

Dated and delivered at Machakos this 1st day of October, 2019.

D. K. Kemei

Judge