



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 2 OF 2018

REPUBLIC.....STATE

VERSUS

GEORGE KITHINZI MUSYOKA.....ACCUSED

RULING

1. The accused herein **George Kithinzi Musyoka** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 7th January, 2017 at Katangini village in Matungulu Sub-county within Machakos County he murdered **Samuel Mbithi Mukosi**.

2. The accused denied the charge thereby warranting a trial. So far two witnesses have tendered their evidence. Learned counsel for the defence has filed an application dated 6/09/2018 seeking for the release of the accused on reasonable bail/bond pending the determination of the case. The application is supported by the affidavit of the accused and grounds on the face thereof which raised several reasons *inter alia*: that the Applicant has a constitutional right to be released on bond; that there are no compelling reasons to warrant denial of bond; that he is ready to abide by the conditions to be imposed by the court; that he will suffer irreparable harm by having to stay in custody before the determination of the case while his family who solely rely on him stand to suffer.

3. Parties did not present any submissions but urged the court to rely on the pre-bail report. The report is dated 17/10/2019 and captures the views of both families of accused and deceased as well as the local administration. There appears to be no compelling reasons to warrant a denial of bond save only that the deceased's family are not happy since the accused's uncles did not assist in settling medical expenses. The accused was reported to be a family man who is not a threat to the family of the deceased. He is described as productive and peaceful.

4. I have considered the application and the pre-bail report. Article 49(1) (h) of the Constitution entitles an accused person to be released on bond pending a charge or trial unless there are compelling reasons not to be released. It is upon the prosecution to present such reasons for consideration. It is noted that the prosecution has not presented any sentiments through the investigating officer. However, the frequent compelling reasons as pointed out in the case of **Republic -v- Ngunya & Another [2011] eKLR** include the following:

- (a) ***The nature of the charge.***
- (b) ***The strength of the evidence which supports the charge.***
- (c) ***The gravity of the punishment in the event of conviction.***
- (d) ***The previous criminal record of the accused if any.***
- (e) ***The probability that the accused might not surrender himself to trial.***
- (f) ***The likelihood of the accused interfering with witnesses or he may suppress any such evidence as incriminating him.***
- (g) ***The probability of a finding of guilt.***
- (h) ***Detention for the protection of the accused.***
- (i) ***The character, antecedents, association and community ties of the accused.***

5. From the pre-bail report it is clear that the same is favourable to the defence application for bail/bond. The accused is reported to have good community ties and that the community is not opposed to his quest for release. The state is also not opposed to the application. Consequently I allow the application dated 6/09/2019 and grant the accused bond in the following terms:-

- (a) Kshs. 500,000/= plus one surety of like sum.**
- (b) The surety to be approved by the Deputy Registrar of this court.**
- (c) Upon release, the accused shall attend court on all scheduled dates without fail until the final determination of the case or until further orders.**
- (d) In default to observe the conditions the bond terms shall stand cancelled and he together with his surety called to account.**

It is so ordered.

Dated and delivered in open court at **Machakos** this **12th** day of **November, 2019**.

D.K. Kemei

Judge