



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 63 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KIOKO MUSEE.....ACCUSED

RULING

1. The appellant **JOHN KIOKO MUSEE** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 27th day of June 2016 at Kayole Estate in Nairobi East Sub-county within Nairobi County murdered **FRANCIS MWAANZA MUTISYA alias BROWN**.

2. He pleaded not guilty to the said charges and by a Notice of Motion dated 7th May 2018 under the provisions of **Section 123, 124 (c) and (d), 125** of the **Criminal Procedure Code** and **Articles 49 (1) and 50** of the **Constitution of Kenya 2010** sought to be released on bond/bail pending trial in which he swore an affidavit where he stated that he was brought up by his grandmother and uncles who could not afford heavy bond terms. He stated further that he was arrested on 5/8/2016 along Kang'undo Road and came to learn that those who beat up the deceased were well known.

3. The prosecution through Miss Wegulu at the hearing of the said application submitted that they did not have any objection to the applicant being released on bond provided that he does not interfere with prosecution witnesses.

4. In compliance with the Bond and Bail Policy Guidelines, the court called for pre-bail report which was filed and in which it was indicated that the accused was single at the time having dropped out in standard six (6) due to financial constraints and at the time of his arrest was running a butchery at Kayole. He was described as hard working who managed his life well.

5. On the Victim Impact Statement it was stated that the deceased was the last born in his family and that they feared that if released on bond the applicant was likely to abscond and further threaten the sister of the deceased whose place of business was known to him.

6. It was concluded that the applicant had a fixed place of abode with contact people who could be reached when necessary.

7. Bond is a constitutional right of every accused person under the provisions of **Article 49 (1)** which can only be denied when there are compelling reasons advanced on a balance of probability by the prosecution. In this case the prosecution has not placed before the court any compelling reasons to enable it deny the applicant the enjoyment of his constitutional right. The apprehension of the relatives of the deceased that the applicant if released on bond is likely to escape or interfere with witnesses is not backed by any evidence and cannot be considered a compelling reason as this will be secured through sureties.

8. In view of the fact that there is no compelling reasons advanced by the prosecution or through the social inquiry report the court is left with no any other legal option than to allow the application herein.

9. Having allowed the application the final issue for determination is what would constitute reasonable bond terms. The accused who is presumed to be innocent at this stage until proven guilty faces a charge of murder where one of the sentences if convicted would be death sentence. Further the court must also take note that there is loss of life as a result of the alleged offence.

10. The purpose of bond still remains to secure the attendance of the applicant at and during his trial. With this in mind I am of the considered opinion and hold that a bond of **Kshs.500,000/=** would be very reasonable. I therefore order that the applicant be released on the following terms and conditions:-

a) Bond of Kenya Shillings Five hundred thousand (Kshs.500,000/=) with one surety of similar amount.

b) In the alternative to the above, bond of Kenya Shillings Two hundred and fifty thousand (Kshs.250,000/=) with three (3) sureties of similar amount..

c) The accused shall not make any contact of whatsoever nature with any of the indicated prosecution witnesses.

DATED, SIGNED and DELIVERED at Nairobi this 12th day of June, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for Ikol for the State

Ms Odembo for the Accused

Accused present

Court Assistant - Karwitha