



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HCCR NO. 95 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**RAPHAEL MUTHOKA MAINDO.....ACCUSED**

**RULING**

1. The accused is charged with an offence of murder contrary to section 203 as read with Section 204 Penal Code.
2. The accused pleaded not guilty and the matter was fixed for hearing on 31/07/2018.
3. However through his advocate, he has applied to be released on bail/bond pending trial. He says he is innocent until proven guilty and he has no previous record of commission of crime.
4. The accused says he will abide by the bail/bond terms in event he is released. He will not abscond nor interfere with witnesses.
5. He urges court to disregard the probation report filed in the matter which is not favourable to him as it relies on alleged threat to do harm to him by the deceased uncle.
6. This is because even after trial of the case if he wins the case he will go home notwithstanding the alleged threat as court cannot keep him in custody in event the case against him fails.
7. The prosecution opposes the application as it urges court to note that bail/bond is not an absolute right but discretion of the court to determine whether there are compelling reasons to deny bail/bond.
8. In the instant case, the prosecution relies on probation report which stated that conditions are unsuitable for release of the accused on bail and points that the fact that there is a threat against him from deceased uncle and also that his wife is a witness and he could interfere with her evidence.
9. On issue of his security, the probation officer did not interview the alleged source of the threat to confirm whether the situation obtains to date.
10. The same remains hearsay and impossible for the court to weigh it. The court would thus not put any weight on that limb. In any event if accused wins case, he still will go home with or without threat looming and lurking.
11. On issue of interference with the wife who is a witness, the court agrees with prosecution that the threat element is in the realm of compelling reason to warrant denial of bail.
12. However the court can counter balance that by delaying accused release on bail between now and 31/07/2018 when the matter is fixed for hearing.
13. Then on 31/07/2018 his wife testifies on priority basis thereafter the court to allow the terms of bond to be set and release thereof.
14. Thus the court finds that the accused will be released on bond of which the terms will be set on 31/07/2018 or thereafter after his wife testifies in court.

SIGNED, DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF JULY 2018, IN OPEN COURT.

.....

C KARIUKI

JUDGE