



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 16 OF 2017

REPUBLIC APPELLANT

-VERSUS-

**ALEX GORI ONDIEK 1ST RESPONDENT
KENNEDY MWINZILA MULYUNGA 2ND RESPONDENT**

(CONSOLIDATED WITH MKN. HCCR. NO. 17 OF 2017).

RULING

INTRODUCTION

1. The accused person is charged with an offence of murder contrary to Section 203 as read with Section 204 penal code.
2. The particulars being that on the night of 12th and 13th April 2017 at Kanaani village Kiboko, within Makindu Sub-county, Makueni County with others not before court murdered Titus Kyangaa Kiema.
3. The accused pleaded not guilty and the matter was fixed a trial date slated on 15/10/2018.
4. Meanwhile, he applied to be released on bail/bond pending trial invoking the provisions of Article 49 of the Constitution of Kenya. He pledged and undertook to abide by the reasonable terms the court may impose.
5. The prosecution opposed the bail/bond principally on the grounds that after the allegedly committing the offence he is facing, he ran away until the time he was arrested. Further that he has no place of abode and once released he may not be found in event he absconds.
6. The court commissioned the probation officer to prepare pre-bond report which was filed. The probation officer also filed an affidavit by the investigation officer on the circumstances in which it opposes the bond application.
7. The probation report dated 20/06/2018 found that the accused is not likely to interfere with witness. His father is ready to stand surety for him. His parents and assistant chief say that he is not a flight risk.
8. However, since he had escaped from home, the probation officer finds him likely to abscond. Thus recommendation unfavorable for his release on bond.
9. The investigation officer affidavit sworn on 31/07/2018 state that the accused after allegedly committing offence disappeared and was arrested in Mombasa.
10. He is not a local but from Masaba, Kisii region and may never be traced after release on bond.
11. Also since they have been supplied with the witness, they are likely to interfere with witness.
12. The provisions of Article 49 guarantees every accused person a bond/bail pending trial except where there are compelling reasons to deny the same.
13. The bail/bond guideline provides that the possibility of applicant absconding is a compelling reason to deny accused person bond/bail pending trial.

14. The accused has not rebutted the Probation Officer's report that while at home he ran away to unknown place for a while without telling parents his whereabouts.

15. Further he has not denied that after the incident subject herein he ran away until he was arrested in Mombasa.

16. The court finds that the accused is a flight risk and may abscond if released on bond.

17. Thus the court finds that the accused will remain in custody but his trial will be fast tracked.

SIGNED, DATED AND DELIVERED THIS 20TH DAY OF SEPTEMBER, 2018, IN OPEN COURT.

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C. KARIUKI

JUDGE