



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 200 OF 2017

REPUBLIC APPELLANT

-VERSUS-

MWANZIA MUSEMBI RESPONDENT

RULING

INTRODUCTION

1. The accused person face a charge of murder contrary to Section 203 as read with Section 204 Penal code Cap 63.
2. In that on 25/06/2016, at Kiboko village, Makindu Sub-county, Makueni County murdered Florence Ndunge Mulwa. He pleaded not guilty and matter was fixed for hearing on 02/10/2018.
3. Meanwhile, the accused has sought to be released on bond pending trial.
4. The prosecution has opposed the release of accused on bail/bond. The court ordered the probation officer to file a pre-bond report (PBR) which was filed and dated 25/06/2018.
5. The police have also filed an affidavit in support of the denial of accused release on bail/bond.
6. The family members are apprehensive that the accused may abscond once released. Further the fear that deceased was his wife where they had five children, might attempt him to go for the children for marriage from his in-laws and a confrontation may arise.
7. There is no guarantee that he will not interfere with the witnesses. In an affidavit sworn on 31/07/2018, the investigation officer reiterates the above information which is contained in probation report.
8. The accused on his defence assures court that he will abide by any reasonable conditions the court will attach to the grant of bail/bond.
9. Under Article 49 of the Constitution of Kenya, the accused is entitled to Pre-trial Bond. Except where there are compelling reasons are adduced to warrant denial of the same.
10. It is incumbent upon the prosecution to demonstrate the availability of the compelling grounds.
11. Among the grounds discernible from the probation report and the affidavit by the investigation officer, are the possibilities of interference with witnesses and absconding by the accused.
12. The accused has not verbally and or via affidavit rebutted the above two documents in court.
13. The court finds that at this stage the circumstances obtaining do not favour grant of bail/bond. The application is thus dismissed.

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

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C. KARIUKI

JUDGE