



## REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA AT KIAMBU

#### CRIMINAL CASE NO 27 OF 2018

**MICHAEL KARANJA IRUNGU.....ACCUSED**

**VERSUS**

**REPUBLIC..... RESPONDENT**

### R U L I N G

1. The Accused herein is charged with **Murder** contrary to Section 203 as read with Section 204 of the Penal Code. In his affidavit in support of the bail application filed on 5<sup>th</sup> June 2018, the Accused depones *inter alia* that he resides in Machakos and previously worked at Goshen Ministries; that he is not a flight risk and will abide by any conditions set by the court as to bail.

2. An affidavit opposing his release on bail was sworn by the investigating officer **PC Kyalo**. The investigating officer depones that the Accused is known to ten of the prosecution witnesses hence the fear that he may interfere with them; that the Accused person has no fixed abode and he poses a threat to the daughter of the deceased **A N N**

3. Article 49(1) (h) of the Constitution provides that an accused person is entitled to be released on bail or bond on reasonable conditions unless there be shown compelling reasons militating against such release. The primary consideration in granting bail is whether the Accused person will attend his trial. See **Job Kenyanya Musoni v R [2012] e KLR**. Even so, other factors are relevant, including the nature of the charges; strength of the evidence supporting the charge; gravity of the punishment prescribed for the offence; previous criminal record; likelihood of interfering with witnesses; likelihood of further charges and public safety or the Accused person's own safety. See **R v Danson Mgunya & Another (2008) e KLR**. The duty lies with the DPP to present cogent evidence why bail should be declined. Moreover, the Accused person is presumed innocent until proven guilty.

4. The two reasons cited by the prosecution in this case in opposing bail relate to the likelihood of interference with prosecution witnesses, who on the face of it are known to the Accused person, and the likelihood, based on the fact that the Accused has no known place of permanent residence, of absconding. There is no tangible evidence to support the first objection.

5. The court has considered the pre-bail report prepared by the probation office in respect of the Accused's personal circumstances. The report discloses no more than the information supplied by the Accused himself as he claimed that members of his immediate family are deceased. The report noted that he did not give contacts of his extended family. The sole contact given, an alleged friend of the Accused person could not be raised on the phone number given.

6. Of more concern is the fact that even the probation officer could not confirm the permanent residence of the Accused persons. This tends to confirm the statement by the investigating officer that the Accused is a flight risk, not having any known permanent place of residence. As stated in **Mgunya's case**, the standard of proof of compelling reasons is on a balance of probabilities. (See also **R v Mohamed Ahmed Omar [2010] e KLR**).

7. Considering all the foregoing, this court is in some doubt as to whether the Accused person will attend his trial as required. Nonetheless, rather than deny him bail at this stage, the court feels entitled and obligated, taking into account the circumstances of the case, to tailor bail terms and conditions that will secure his attendance, if released on bond.

8. In the circumstances, the court grants bail/bond to the Accused on the following terms:

- a) The Accused to deposit cash bail in the sum of KShs.100,000/= (one hundred thousand)
- b) In addition to (a) above the Accused to execute a personal recognizance in the sum of KShs.500,000/=
- c) In addition to (a) and (b) above, the Accused to furnish two sureties, each of them in like sum of KShs.500,000/=.

d) The Accused person to report to the Deputy Registrar of this court during monthly mentions without fail, on the dates given by the court.

e) The Accused is ordered to refrain from contacting, communicating with or in any way reaching out to any of the prosecution witnesses, including the deceased's daughter **A N N** or any other members of the family of the deceased.

**DELIVERED AND SIGNED AT KIAMBU THIS 17<sup>TH</sup> DAY OF OCTOBER, 2018**

**C. MEOLI**

**JUDGE**

**In the presence of:**

Mr. Njuguna for the Accused

Miss Ndombi for DPP

Court clerk - Kevin