



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL CASE NO. 114 OF 2015

WILLIAM KAMARU THOTHOAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant WILLIAM KAMARU THOTHO faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on the night of 9th December, 2015 at Kinoo Kishagi in Kikuyu Sub county within Kiambu County murdered ROSE MUNALA to which he pleaded not guilty.
2. In exercise of his Constitutional right under Article 49 of the Constitution of Kenya 2010 the same applied to be released on bond pending trial and in opposition to the said application the State through PC KEN MWENGE filed a replying affidavit in which it was deponed that the accused does not qualify to be admitted on bond because the prosecution has strong and irrefutable evidence pointing to his guilt having been the last person with the deceased before she met her death.
3. It was deponed that the applicant had been charged with a very serious offence of murder and temptation to abscond was real. It was further deponed that there was a risk of the same intimidating prosecution witnesses who are known to the accused.
4. On behalf of the accused it was submitted that the State had not given any compelling reason to enable the court deny the accused his Constitutional rights to bond. It was submitted that the accused submitted himself to the Area Chief and was willing to participate fully in the criminal process.
5. In compliance with the requirements of Bail and Bond Policy Guidelines the court ordered for a pre-bail report in which it is stated that the family of the victim were opposed to the accused being released on bond as he is likely to run away or interfere with evidence.
6. In support of the application here the defence submitted the following authorities:-
 1. HIGH COURT OF KENYA AT MACHAKOS CRIMINAL CASE NO. 44 OF 2015 where Justice Muriithi discounted the contention that the accused was likely to interfere with witnesses since the provisions of WITNESS PROTECTION ACT 2006 can cure the same.
 2. TIMOTHY MWITI MWANGI v REPUBLIC HIGH COURT OF KENYA AT NYERI CRIMINAL CASE NO. 12 OF 2013 where I considered the grounds for grant of bail.
7. In the case before the court, the only grounds advanced by the State to deny the accused his Constitutional rights are:-

- a. Likelihood of interference with witnesses.
 - b. The possibility of the accused absconding.
 - c. The severity of the offence.
8. Article 49 now grants bail in all offences and therefore the seriousness of the offence without further consideration cannot be a ground to deny an accused person bail. The prosecution has not given the names of the witnesses which are alleged might be intimidated by the accused person and taking into account the fact that the accused presented himself to the Area Chief as submitted by his advocate Mr. Njoroge, I find that the state has failed to give any compelling reasons to deny the accused person bond and it would therefore be unfair for this court to deny the same his Constitutional Right.
9. Having taken into account the pre-bail report and the fact that the accused person faces the charge of murder I would allow the application for bond and order that the accused be released on bond pending trial on the following terms:-
- a. Bond of Kshs.500,000 with two-like sureties of like amount.
 - b. In the alternative case bail of Kshs.200,000/- and bond of Kshs.50,000/- with two sureties of similar amount.
 - c. During the period of this trial the accused person to report to Chief of KINOO LOCATION of Kiambu County once after every 30 days on the last Thursday of each month and to the Deputy Registrar of this court once after every 90 days at dates to be set by the said Deputy Registrar while approving bail terms.

DATED, SIGNED and DELIVERED at Nairobi this 8th day of March, 2016

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the state

Mr. Njoroge for the accused

Accused present

Tabitha court clerk