



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 113 OF 2015

REPUBLICRESPONDENT

VERSUS

DAVID MWANGI GITHAMBU APPLICANT

RULING

1. The applicant DAVID MWANGI GITHAMBU is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on 29/10/2013 and 30th October, 2013 at Kinoo in Dagoretti in Nairobi County murdered Erick Githambu Mwangi
2. He pleaded not guilty to the said charge and in exercise of his rights under the provisions of Article 49(1) (h) of the Constitution of Kenya 2010 the same moved the court to be released on bond pending trial and determination of the case.
3. In opposition to the bond application, the State filed a Replying Affidavit sworn by P.C VINCENT SIRO in which it was deponed that the accused strangled the deceased to death with another person not before the court and further attempted to murder one **MARIA WACHERA** who while being strangled pretended to had died.
4. It was stated that immediately after the commission of the offence; the accused relocated to Naivasha from Kijabe so as to avoid arrest and only presented himself to the police when he allegedly noted that he was being chased by Evil spirits. It was further deponed that there was a real apprehension of the accused interfering with the prosecution witnesses since he already knew them having been supplied with copies of witness statements and that there was the likelihood of the accused absconding should he be released on bond.
5. In compliance with the provisions of Victim Protection Act and the Bond and Bail Policy Guidelines, the court ordered for pre-bail report in which it was stated that the family of the deceased are not ready to accept the accused back into their midst the accused having at some stage threatened one of his aunts. That whereas the accused has a young family that depended on him by his conduct he is being viewed as a flight risk.
6. To further assist the court in reaching a just determination herein the court ordered for two medical examination of the accused person one by the consultant psychiatrist at Mathare National Teaching & Referral Hospital where Dr. Ochieng concluded that the accused may have developed a substance induced mood disorder, from alcohol and a cannabis that precipitated his abnormal behavior and recommended that the same be admitted for treatments and on 16/5/2016 Dr. Ngugi Gatere of the same hospital concluded that the accused had become capable of making his defence. There was further a medical report by Dr. G.K Mwaura of Kinoo Medical Chris in which it was stated that the accused had made full recovery and therefore capable of leading a normal life.

7. Bail is now a Constitutional Right of every accused person under the provisions of Article 49(1) (h) of the Constitution of Kenya 2010 and can only be denied where there are compelling reasons to do so. In this matter before me the following facts emerges from documents presented; the accused is charged with the murder of his father who was estranged to his mother who is willing to stand surety for the accused person. Further the accused upon the alleged commission of the offence herein relocated from Kijabe to Naivasha and was at large for a period of two years. When he first appeared before court, the accused declined to answer to his name on the charge sheet.
8. The investigating officer **PC VINCENT ZIRO** appeared in court and stated on oath that when the accused surrendered himself at Naivasha police station, he gave his name as **DAVID MWANGI GITHABU** but when he was brought to court he gave his name as **NJOROGE**, whereas the record at the Registration of Persons confirmed that his name was **DAVID MWANGI GITHAMBU ID NO. 27721188**.
9. From material present aforesaid I am satisfied that the State has provided adequate compelling reasons to enable the court deny the accused bond at this stage, these compelling reasons are:- by his conduct, the accused person is a flight risk, having relocated from the area where the offence was allegedly committed and was at large for a period of two years. Since the accused is alleged to have murdered his father, most of the prosecution witnesses are related to the accused person who if released on bond is likely to interfere with them either physically or emotionally.
10. The accused by declining to respond to his known names has come out as somebody, who if released on bond at this stage, will likely interfere with the administration of Justice. Further, based on the medical reports herein I am of the considered view and find that it is in the best interest of the accused to be remanded custody during the period of trial and to continue with medical treatment at Mathari Hospital from time to time.
11. In the final analysis I find that there are compelling reasons to enable the court deny the accused his Constitutional right to bail at this stage. The accused shall remain in remand custody during the period of his trial but is at liberty to apply for Review of this order once all the prosecution witnesses who are related by blood with the deceased have testified and it is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 6th day of June, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the state

Mr. Anambo for Muchiri for the accused person

Accused present

Tabitha court clerk