



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**HIGH COURT CRIMINAL CASE NO 99 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**K M S.....ACCUSED**

**RULING**

1. The applicant **K M S** was 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 13<sup>th</sup> October, 2014 at Waruku village Dagoretti District within Nairobi county murdered **ROSE MUKUI**.
2. He pleaded not guilty to the said charges and by a Notice of Motion dated 30/12/2015 moved the court to be granted bond/bail upon reasonable terms pending trial on the grounds that he had been in custody since 13/10/2014 when he was arrested and that if released, will not interfere with investigation or the prosecution having fully co-operated with the investigation team.
3. The application was opposed by the State through a Replying Affidavit sworn by **PC PETER OJWANG** where it was deponed that the applicant knew the prosecution witnesses and was aware of where they resided having been served with their statements and there was a possibility that the accused person if released on bond would inflict genuine fear and anxiety on the potential prosecution witnesses.

**SUBMISSIONS**

4. On behalf of the applicant Mrs. Gulenywa submitted that the same was willing to abide by any terms and conditions given by court and that the State had not indicated how the same was likely to interfere with witnesses. On behalf of the prosecution, Mr. Magoma submitted that there was a likelihood of the accused interfering with two prosecution witnesses who were well known to him. It was further submitted that the accused was likely to abscond from the jurisdiction of the court if granted bail to unknown place.

**PRE-BAIL REPORT**

5. The court called for and received a pre-bail report dated 6/6/2016 in which it was stated the accused is born in a family of six children having been brought up by his mother as the father resided mostly in Nairobi where he fended for his family by performing casual jobs. At the time of his arrest the accused was working as a waiter at Mr. Price in Gigiri. He had earlier been married to one E M who left him to go back to her people to pursue education and was cohabiting with the victim at the said time. It was further stated that the accused claimed to be HIV Positive on ARV drugs and that his family were willing

to stand surety for him.

6. In respect of the victim impact statement it was stated that at the time of making the report they had not been interviewed and therefore their impact had not been captured.

7. It must be noted that at the time of this ruling the court had heard the evidence of three prosecution witnesses.

8. Victim Protection Act requires the court to consider the views of the victims before the court makes any decision as regards the release of any accused person. This requirement has been reinstated in the Bond/Bail policy guidelines which stipulates the conditions upon which the court ought to grant bail to an accused person.

9. Having not heard from the victim's family and taking into account the fact that three prosecution witnesses have since testified against the accused and the matter is fixed for further hearing and there is a possibility of the same being concluded before the close of the year I am of the considered view that it would not be in the best interest of justice if the accused is released on bond at this stage before hearing the views of the family of the victim.

10. The probation officer is hereby ordered to prepare a more comprehensive report to be presented to court on 27/9/2016 when the matter is scheduled for further hearing.

DATED, DELIVERED and SIGNED at Nairobi this 18<sup>th</sup> day of July, 2016.

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Magoma for the state*

*Mrs. Gulenywa for the accused*

*Accused present*

*Tabitha court clerk*