



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL (MURDER) CASE NO. 41 OF 2015**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**DOMINIC MUHANGANI.....ACCUSED**  
**RULING**

1. The accused person herein is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence being that on the 19<sup>th</sup> day of April, 2015 at Kamdep area at Khayega in Shitochi Sub-location in Kakamega East District within Kakamega County, he murdered Daniel Mmbaka. He has pleaded not guilty and is awaiting trial.
2. In the meantime the accused person prays that he be released on reasonable bond/bail terms pending trial. The accused has made this application under the provisions of article 49(1)(h) of the Constitution which provides that “An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” It is the duty of the prosecution to offer such compelling reasons. Where no such reasons are given the court ought to exercise its discretion in favour of granting the accused bond.
3. In the instant case, the prosecution informed the court that there is no compelling reason why the accused person herein may not be released on bond.
4. The court also called for a pre-bail report which indicates that the accused is 29 years old and is still single. While his father is deceased, the mother is still alive and ekes out a living selling vegetables. He has 3 siblings. The report also reveals that the accused person lives in different places and only visits home sometimes. He is reported to be cruel, violent and has no respect for authority. His company consists of people with criminal tendencies. The accused is also said to abuse chang’aa and bhang.
5. The report also shows that the accused’s mother has been forced to move out of the home because of the allegations made against the accused. According to the report the community is of the view that the accused is likely to threaten witnesses’ and that he is a flight risk.
6. With the above information in mind the issue that arises for determination is whether there are compelling reasons why the accused may not be released on bond. It appears clear to me that the accused person is a flight risk because he does not appear to have fixed place of abode. The situation is made worse by the fact that the accused’s mother has been forced to relocate from the home to another place because of cultural beliefs associated with allegations of murder. Secondly, because of his violent and cruel nature, the accused person is likely to interfere with witnesses who are also close relatives since the

deceased is said to have been a maternal cousin.

7. What all the above means is that if any bond terms are granted they must be such as would ensure that the accused turns up for trial. It would be a slap in the face of the victim's family if the accused is granted bond only to vanish into their air and turn the trial into a white elephant. For the above reasons, I allow the bond application on the following terms.

1. The accused person may be released on bond of kshs.1,000,000/= (Kenya shillings one million) plus two(2) sureties of a like amount
2. The sureties who must offer substantial security shall be approved by the Deputy Registrar of the Honourable Court.
3. Once released on bond, the accused must attend court as and when required until the case is heard and determined or until further orders of this honorable court.
4. The accused once out on bond shall also report to Kakamega Police Station once every Monday until the case is heard and determined or until further orders of this honourable court.
5. In default of 3 and 4 above, the bond shall be cancelled at once and the sureties called to account
6. Mention on 26.11.2015 for fixing hearing dates
7. Until then accused is remanded in custody.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 1<sup>st</sup> day of October, 2015

**RUTH N.SITATI**

**JUDGE**

In the presence of

Mr. Omwenga (present) for the state

Mr. Osango for Wekesa for the accused

Mr. Okoiti Court Assistant