



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

**CRIMINAL CASE NO. 74 OF 2015**

**REPUBLIC .....APPLICANT**

**VERSUS**

**BONIFACE MUTWIRI CHEME .....RESPONDENT**

**RULING**

1. The applicant herein faces a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. In line with the provision of Article 49 of the Constitution of Kenya 2010 the accused person applied for bond before my sister Justice Lesiit which application was opposed by the prosecution through an affidavit sworn by **SGT ANASTASIUS MURIUKI** on 9/11/2015.
2. Upon hearing the advocates herein the judge ordered for pre-bail report to be filed which was filed on 28/8/2015 the content of which I will rely upon in this ruling.
3. While this matter was still pending ruling before my sister the family of the deceased had on 5/8/2015 filed a civil suit at the Principal Magistrates Court at Milimani in which the father of the deceased sought an order of injunction against the accused from interfering with the burial of the deceased in her father's land at Kahuro sub location, Gitiri village in Muranga County which suit was on 31/8/2015 marked as settled by consent on the following terms:-
  - a. *The body of Purity Njeri Gathura, the deceased, be buried in Meru County.*
  - b. *Both families to participate in the funeral arrangements.*
  - c. *Burial be on 4<sup>th</sup> September, 2015.*
  - d. *The production order be issued for BONIFACE MUTWIRI CHEME to be escorted to Meru County to attend the burial of his wife Purity Njeri Gathura on 4/9/2015.*
  - e. *No order as to costs.*
4. On 28/10/2015 the Presiding Judge of the Criminal Division, Justice Lesiit directed that the file be placed before me for direction on the application for bond herein upon which Mr. Mwendwa for the state submitted that the only compelling reason upon which they were opposed to the deceased being released on bond was that there was a material witness who was under witness protection who was an employee of the accused and the deceased who is not a Kenyan citizen who was in reasonable apprehension of the release of the applicant on bond before the matter is heard.

5. I therefore directed that the evidence of the said witness be heard before the application for bond can be determined and on 16/11/2015 the court took the evidence of the said witness.
6. Having therefore taken the evidence of the said witness I am therefore of the considered opinion and find that there are no compelling reasons to deny the accused bond which has been recommended by the pre-bail report herein dated 25/8/2015 so that the accused person can take care of his two young children who are now staying at their paternal grandparents' place.
7. Having found that there is now no compelling reason to deny the accused person bond, the next question for determination is what will be reasonable terms upon which to grant bond as is required under the provision of Article 49(h) which requires that an arrested person be released on bond or bail on reasonable conditions pending trial.
8. The Bail and Bond Policy Guidelines now calls for the court to balance the rights of the accused person and those of the victims of the crime and the society at large and to grant bond terms which are reasonable in the circumstances of each case. Taking into account the fact that the accused person faces a charge of murder wherein the only available sentence if found guilty is death and balancing the interest of the minor children herein who ought to enjoy the company of their father at Christmas since the outcome of this case is not very clear, I am of the considered view that the following terms are very reasonable and hereby order that the accused be released on bond as follows:-

***a. Bond of Kshs.500,000/- with three sureties of like amount in the alternative.***

***b. Cash bail of Kshs.1,000,000/-.***

***c. During the period of the trial the accused person shall attend mention before the Deputy Registrar of this division once after every 60 days at a date to be set by the said Deputy Registrar while approving sureties herein.***

***d. The accused shall not leave the jurisdiction of the court without authority of the Deputy Registrar of this division which authorization must be filed in the court file.***

DATED, SIGNED and DELIVERED at Nairobi this 2<sup>nd</sup> day of December, 2015

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Miss Mwaniki for the state*

*Mr. Ondieki for the accused*

*Accused in person*

*Tabitha court clerk*