



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.4 OF 2017

REPUBLIC.....PROSECUTOR

Versus

TIMOTHY MWENDA GICHURU.....1ST ACCUSED

JACKSON MUGAMBI MUTWIRI.....2ND ACCUSED

NATHAN MURIUKI MUTHURI.....3RD ACCUSED

RULING.

[1] The accused persons are jointly charged with others not before court for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya.

[2] By two Notice of Motion applications filed in court on 30th July and 4th July 2018, the accused persons sought for review of the orders of 5th October 2017, in which they were denied bail/bond.

[3] The applications are premised upon the grounds *inter alia* that there no longer exists any compelling reason to deny them bond since circumstances had changed and that a long time had elapsed from the time the incident happened. According to them, members of the public were no longer a threat to their lives.

[4] PC Musa Aol the investigations officer in this case opposed review of bond and deposed *inter alia* that recent intelligence information revealed that locals, colleagues of the deceased and general public were still filled with anger and kept on inquiring about the whereabouts of the accused persons. The police are therefore apprehensive that if released on bond the safety of the accused cannot be guaranteed for reasons among others;

i. That one of their suspected accomplices was murdered and burnt beyond recognition after the alleged offence.

ii. Immediate colleagues of the deceased belong to the uniformed forces and there was fear that if released their bitterness may result in execution.

iii. After the alleged offence, it was quick response and enhanced physical security tactics by the police that saved the accused persons from the angry/irate blood thirsty mob which was likely to complete their mission; to execute the accused persons.

[5] He further deposed that the 1st and the 2nd accused persons were ex-police officers who were likely to use their influence to interfere with witnesses and evidence.

ANALYSIS AND DETERMINATION

[6] I have carefully considered this application and the rival contentions by the parties. From the averments by the IO, it is apparent that the circumstances have not changed even after the accused persons were arraigned in court. A suspected accomplice was burnt beyond recognition by irate mob. I have in many cases lamented about people taking the law into their hands and lynching the suspects. Such is criminal activity as the correct course to take should be to apprehend the suspect and hand him to the police. Nonetheless, this bizarre act is a relevant consideration in an application for bail in establishing whether the security for the accused will be guaranteed if released on bail.

[7] In addition, the information the IO has received show that, as ex police officers, the accused are likely to use their influence and training to interfere with witnesses and evidence. This is not a remote possibility as this case is yet to commence hearing. Again, the circumstances of the case and the averments by the IO, show that possibilities of the accused persons absconding are high especially looking at the earlier

revelations by the IO on the *modus operandi* of the accused. I also take judicial notice of the hue and cry from the members of the public immediately after this incident, and also the expressions by the victims of this crime.

[7] Taking the totality of the circumstances in this case into account, I find that there are compelling reasons not to release the accused on bond under article 49(1) (h) of the Constitution. Accordingly, the application is without merit and is dismissed. The accused persons shall remain in custody as the case is heard. However, I direct the case to be fast-tracked.

Dated, signed and delivered in open court this 29th day of January, 2019

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F. GIKONYO

JUDGE

In presence of

Wamache for Muthomi for 2nd accused

Gitonga for 3rd accused

M/s Atheru for 1st accused person

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F. GIKONYO

JUDGE