

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 83 OF 2015

REPUBLIC PROSECUTOR

VERSUS

BONFACE KIOGORA 1ST ACCUSED

JAMLICK KABURU MUGUNA 2ND ACCUSED

BENARD MURIUKI MBAYA 3RD ACCUSED

R U L I N G

1. **Benard Muriuki Mbaya (“the 3rd accused”)** faces the charge of murder contrary to *sections 203* as read with *section 204 of the Penal Code, Cap 63 Laws of Kenya*. He was admitted to bond together with the other 2 accused on 11th May, 2016. He was released on a bond of Kshs.250,000/- with a surety of a similar amount.

2. On 22nd May, 2018 and subsequent mentions, the 3rd accused failed to attend court. The court cancelled his bond, issued a warrant for his arrest and summoned the surety. Before the warrant could be executed, the surety produced in court on 8th October, 2018. On that date the court declined to pardon him for his absence and placed him in custody.

3. On 25th February, 2019, Mr. Mutegi, his Learned Counsel made a formal application for the re-instatement of his bond. The application was supported by the affidavit of the 3rd accused. He explained the reason for his non-attendance and promised that he has learnt his lesson for the 4 months he has been in custody.

4. At the hearing of the application, Mr. Mutegi relied on the averments in the supporting affidavit and urged that the 3rd accused should be given another chance. Mr. Gitonga, Learned prosecutor opposed the application. He insisted that the 3rd accused is flight risk.

5. I have considered the averments in the supporting affidavit and the submissions of learned Counsel. Bond is usually a Constitutional right which an accused is entitled to but on terms. Once an accused breaches any of the terms thereof, he loses that right.

6. In the present case, the 3rd accused breached one of the terms of his bond. I have however taken into consideration that, his father who is his surety not only produced him in court when called upon, but he also attended court on 26th February, 2019 at the hearing of the application and confirmed to court that he was still willing to stand surety for the 3rd accused.

7. Having considered the positions of the parties before me and the position taken by the surety, I will allow the application and re-instate the bond. The 3rd accused is warned that next time he fails to appear, the court will deal with him without mercy.

Orders accordingly.

DATED and **DELIVERED** at Meru this 27th day of February, 2019.

A. MABEYA

JUDGE