



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 12 OF 2017

MARTIN MUGAMBIAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Martin Mugambi (“the applicant”) was on 27th February, 2017 charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code, Cap 63, Laws of Kenya**. It was alleged that on 14th August, 2016 at Gachagua sub-location, Gachua Location, Giaki Division, in North Imenti within Meru County, with others not before court, the applicant murdered **Peter Mwirigi**.
2. When he originally applied for bond, the court declined to grant it because, it was established that after the commission of the offence, The applicant had run away to the neighboring Marsabit County. He was only apprehended after 5 months. A pre-bail report dated 3rd May, 2017 was negative of him.
3. By a Motion on Notice dated 25th October, 2018, the applicant has once again applied that he be admitted to bond. He contended that he had been in remand for 2 years, that the offence is bail able, that he is the sole breadwinner of his family and that he was frail and ailing and that any further incarceration would put his health in jeopardy.
4. In his affidavit in support, he swore that he will not leave the jurisdiction of the court and that he was ready to abide by any conditions that might be set by the court for the grant of bond.
5. The application was served upon the prosecution who chose not to respond thereto.
6. At the hearing, **Mrs. Kaume**, Learned Counsel for the applicant submitted that, the applicant had been in custody for 2 years and he will stay for a longer period as the case will not be heard any sooner; that the circumstances have now changed from the first time the application was declined. She urged the court to allow the application.
7. **Mr. Namiti**, Learned prosecutor admitted that the prosecution had not filed any response to the application. He indicated that the prosecution relied on the previous position that the applicant was a flight risk.
8. I have considered the averments in the affidavit in support and the submissions of learned Counsel. This is the second time the applicant is applying that he be admitted to bail/bond. Bond is a constitutional right which should only be denied when there exists compelling reasons.
9. There is no definition of what constitutes compelling reasons under **Article 49 of the Constitution of Kenya**. These however, may include an applicant being a flight risk, the likelihood of repeating the offence or committing other offences, personal security, amongst other reasons.
10. In the present case, the reason for rejecting the applicant’s initial application for bond was that he was a flight risk. He had disappeared to Marsabit County after the offence was committed. He has been in custody for now two years. He must have learnt a lesson that the law will always catch up with offenders and once caught, the consequences are always unpleasant.
11. I have considered that this is a 2017 matter. Due to the backlog of criminal cases in this station, the earliest the 2017 matters can be dealt with will be in a year’s time. This is so because the court is now dealing with 2014 and 2015 cases. There are about 100 cases for 2016. That means that this case will take quite sometime before it can be reached for hearing.
12. Apart from the foregoing, I have noted that the prosecution did not respond to the positive averments contained in the supporting affidavit. They remain uncontroverted. The applicant deposed on oath that he will not leave the jurisdiction of the court and that he will abide by any conditions to be imposed by the court. To my mind, having tasted the pain of losing liberty for 2 years and being aware of the

consequences of breaching any bond terms, I am satisfied that the applicant may no longer be a flight risk.

13. Accordingly, I allow the application and admit the applicant to bond. He may be released on a personal bond of Kshs. 400,000/- with a surety of a similar amount.

It is so ordered.

DATED and **DELIVERED** at Meru this 30th day of May, 2019.

A. MABEYA

JUDGE