



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. 83 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BONFACE KIOGORA..... 1<sup>ST</sup> ACCUSED**

**JAMLICK KABURU MUGUNA.....2<sup>ND</sup> ACCUSED**

**BENARD MURIUKI MBAYA..... 3<sup>RD</sup> ACCUSED**

**R U L I N G**

1. **Benard Muriuki Mbaya (“the 3<sup>rd</sup> 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 11<sup>th</sup> May, 2016. He was released on a bond of Kshs.250,000/- with a surety of a similar amount.

2. On 22<sup>nd</sup> May, 2018 and subsequent mentions, 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 the accused in court on 8<sup>th</sup> October, 2018. On that date the court declined to pardon him for his absence and placed him in custody.

3. On 25<sup>th</sup> February, 2019, Mr. Mutegi, Learned Counsel for the 3<sup>rd</sup> accused made a formal application for the re-instatement of his bond. The application was supported by the affidavit of the 3<sup>rd</sup> 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 3<sup>rd</sup> accused should be given another chance. Mr. Gitonga, Learned prosecutor opposed the application. He insisted that the 3<sup>rd</sup> 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 3<sup>rd</sup> 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 26<sup>th</sup> February, 2019 at the hearing of the application and confirmed to court that he was still willing to stand surety for the 3<sup>rd</sup> 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 3<sup>rd</sup> 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 24<sup>th</sup> day of October, 2019.**

**A. MABEYA**

**JUDGE**