



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 45 OF 2017**

**REPUBLIC ..... STATE**

**VERSUS**

**BONIFACE NDOGO GITAU ..... 1<sup>ST</sup> ACCUSED**

**MORGAN KARUMA WANJIRU ..... 2<sup>nd</sup> ACCUSED**

**CHARLES KIMUTAI MBURU ..... 3<sup>RD</sup> ACCUSED**

**RULING**

The three accused persons are jointly charged with the offence of murder. Through their advocates all three accuseds have applied to be released on bond. Bond is a constitutional right which is guaranteed by Article 49(i)(h) of the Constitution of Kenya.

The application for bond was argued before me on 24/11/2017. The learned State Counsel opposed the Grant of Bond to the accused persons and in so doing relied upon the affidavit of **No. 78556 PC NICKS KARANI** who was the Investigating Officer. The court directed that pre-bail reports be prepared and filed in court. This has now been done.

As stated earlier the right to be released on bond is a constitutional right. The liberty of a person cannot be denied him except for very grave reasons. The court may only deny an accused person bond where it has been demonstrated to the satisfaction of the court that there exist compelling reasons to deny bond.

I have looked at the affidavit of the Investigating Officer dated 20/11/2017 in which he cited the grounds upon which the court ought to deny the three accused persons bond. In my view none of the grounds cited in that affidavit can be said to amount to a compelling reason to deny the accuseds bond.

It is claimed that some of the potential witnesses are family members who fear for their lives should the accuseds be released on bond. It is the duty of the police to provide protection to all citizens and more particularly where one is a witness in a murder trial. No affidavit has been sworn by any witness who fears for his/her life. There is no evidence of any report having been made to any police station of such fears. If there exists a witness who is truly in any danger then the prosecution are at liberty to make use of Witness Protection Services for that witness and family if need be. No request/application has been made by the prosecution to place any witness under the Witness Protection Programme. Thus this ground is nothing but a bare statement with no tangible evidence to back the claim.

Secondly it is alleged that one of the accused persons has confessed and he fears for his life. Firstly the question of confession is a matter for trial. Secondly the accused who allegedly confessed has not named in the affidavit. Lastly if any one of the accused is truly in fear for his life then all he needs do is to reject the bail terms (if granted) and opt to remain in prison. Police cannot seek to have suspects remanded so as to absolve the force of their duty to protect all citizens.

The third ground was that the security of the accused persons cannot be guaranteed if they are released on bail. All suspects are deemed to be innocent until proven guilty. Like all persons in Kenya the accused persons are entitled to be protected by the State (police) while they are out on bail. To say that their security cannot be guaranteed amounts to a major indictment against the Kenya Police. This ground in my view holds no water.

Finally it is alleged that the 2<sup>nd</sup> accused is a Dutch citizen and may abscond if released on bond. The fact that an accused does not hold Kenyan passport is not an automatic ground to deny that suspect bail. The court must look at and consider each case on its own merits. Bail is not a right limited only to Kenyans citizens.

Finally it was alleged that the murder weapon is still missing and police fear that the 3 accused if released on bail would interfere with attempts to recover the same. Again this is an indictment on the Kenya Police. They cannot blame the 3 accuseds for their failure to recover the murder weapon. Nor can the accuseds be kept in remand to enable police search for and recover that weapon since there exists the very real possibility that it may never be recovered.

Having taken into account the arguments made by both sides I find that there exists no valid or compellable reasons to deny the three accused persons bail. I therefore grant bail to the 1<sup>st</sup> and 3<sup>rd</sup> accused persons in the sum of Kshs 400,000/= plus 1 surety of a like sum each. With respect to the 2<sup>nd</sup> accused I direct that he be released on a bond of Ksh 300,000/= plus two (2) Kenyan sureties of like sum **SUBJECT** to the Dutch Passport of the 2<sup>nd</sup> accused being deposited and held by the court for the duration of the trial.

If released on bail each accused shall report to the Investigating Officer of the case **every Monday at 9.00am** until further orders of court.

**Dated in Nakuru this 29<sup>th</sup> day of January, 2018.**

**Maureen A. Odero**

**Judge**