



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HCCR NO. 5 OF 2017

EPHANTUS MUGO MWANGI.....PROSECUTOR

- V E R S U S -

REPUBLIC.....RESPONDENT

R U L I N G

The issue before me is whether the accused person Ephantus Mugo Mwangi should be released on bond/bail pending trial.

His application is premised on Article 49(1)(h) of the Constitution which provides that an accused person has the right to *be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.*

Initially the prosecution had no objection to the release on condition that the accused person did not interfere with the minor witness in this case one JMG.

The court sought and was provided with a Pre Bail Report filed by the Probation Officer Mukurweini. The report raised 3 issues; -

1. That the incident was still too fresh in the memories of the community where the accused hailed from and the family of the deceased victim who were still hurting from, and posed a danger to his own security. This is based on the fact that the accused person faces the charge of murder contrary to section 203 as read with 204 of the Penal Code – where it is alleged that he on 29th July 2017 at Ichamara shopping centre, in Mukurweini sub-county, Nyeri County within the Republic of Kenya he jointly with another not before court murdered Patrick Mutahi Kariuki.
2. That although the family were ready, willing and able to stand surety for him, they would not be able to watch over him/or guarantee his court attendance.
3. That, according to the victim’s family and the area chief who were interviewed, one witness who is described as a ‘young man’ may feel threatened if the accused person was released on bond.

When this report was provided to court and shared with counsel for the accused person and the prosecution, the prosecution’s position was that they were not aware of the issues raised by the social inquiry report, and urged the court to take them into consideration in determining the issue.

On his part, counsel for the accused filed the authority–

Nyeri HCCR Case No. 17/11 Republic vs. Michael Mwangi Karangi (Unreported) in which my brother Justice Wakiaga dealt with the issue of bail pending trial, in a case where the prosecution did not have any objection to the release of the accused on bond.

I have carefully considered the PBR and the authority placed before me. It is clear that the prosecution was not aware of any serious issue that would amount to a compelling reason to warrant the denial of bond to the accused person.

It is not lost to this court that the family of the victim would still be in pain over the loss of their loved one, but that per se is not a compelling reason to deny the accused person bail as it must be balanced with the legal position that the accused person is presumed innocent until proven guilty.

On the issue of the vulnerable witness, the court is live to the need to protect such a witness from any threat whatsoever. However, the prosecution has the mandate to bring to the court’s attention any needs for specific orders either under the Victims of Crime Act or the Witness Protection Act. At this stage the court can issue conditions to restrain the accused and ensure that he does not interfere with the witness.

With regard to his own safety, the accused person does not personally feel the threat and did not raise it. Secondly, the PBR indicates that the accused's family has relatives in other places other than the place where this offence allegedly took place. The accused person can live there to avoid any contact with the witnesses or the family of the deceased.

In view of the above the application for bond/bail is therefore granted on the following terms: -

1. Accused be released on bond of Ksh. 500,000/= with two sureties for this amount.
2. Upon release, if at all the accused to stay away from Ichamara area
3. Wherever the accused person will choose to stay, the Deputy Registrar to inquire, during the approval of the sureties, and confirm the nearest police station so that the accused person can report to the OCS every two weeks.
4. The accused person to report to the area chief upon release, and the chief to confirm in writing the accused's reporting in writing to the Deputy Registrar.
5. The accused person not to leave the area at 4 above, without reporting to that chief.
6. The accused to attend a mention before the Deputy Registrar every 30 days.
7. These orders be extracted and served on the relevant offices for compliance.

It is so ordered.

Dated, delivered and signed this 18th January 2018

Teresia M. Matheka

Judge

In the presence of;

Court Assistant; Hariet

Accused person

Kimunya for accused

Muranga for state.