



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 67 OF 2017

REPUBLIC.....PROSECUTOR

versus

FESTUS KIMATHI.....ACCUSED

RULING

Bail

[1] The accused, herein FESTUS KIMATHI, has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He has now applied to be released on bail/bond on such terms and conditions as the court may determine.

[2] Mr. Kibiti, Learned Counsel for the accused submitted that the accused comes from his home area and he is not a flight risk. He also submitted that the society is not any danger to the accused. And on that basis, he urged the court to consider releasing the accused on bond or bail with favorable terms. He stated that the pre-bail report merely talks of interference with witnesses which is a remote possibility.

[3] Mr Namuti, Learned Counsel for the state opposed the bail/bond on the basis that the pre-bail report raises compelling reasons of interference with witnesses.

Pre-bail report

[4] According to the pre-bail report, the family of the victim had no kind words to say about the accused though he had been a family friend of the deceased for many years. The family know the accused as a violent person and who is feared in the community for his immense temper and violence especially when he is drunk. They are afraid that the accused will intimidate the witnesses if he released on bond. The area chief confirmed those fears and added that the accused has several cases of violence upon members of community.

[5] From the interviews he conducted, the Probation officer made the following conclusions:

- a. That the family of the deceased is still bitter and alleges that the accused would have been arraigned in court earlier were it not that he laid low after the incident.*
- b. The accused also instilled fear on witnesses. As a result, it took time for witnesses to come forward.*
- c. That, whereas the accused is a hardworking person, his high tempered when drunk make the community members to avoid him.*
- d. That the matter is still very fresh in the deceased's family mind hence very volatile.*
- e. On the basis of those findings, the accused's security cannot be guaranteed nor that of the deceased's family.*
- f. There is also a probability of witness interference. Thus, bail and bond should not be granted.*

DETERMINATION

[6] I have considered this application. Needless to state that, by dint of the Constitution of Kenya, 2010, all offences are bailable, except an accused may be denied bail where there are compelling reasons not to release him. See Article 49 (1) (h) of the Constitution which provides as follows:-

“(1) An arrested person has the right –

(h) to be released on bond and bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

[7] Existence or otherwise of “compelling reasons” will be decided on the peculiar facts of each case. I say so because there may not be any scientific measure of what exactly amounts to compelling reasons. Except, however, judicial decisions seem to suggest that compelling reason should be one which is rousing, strong, of interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. This standard is high and draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justifiable in a democratic society, and should not rout the very core of the right as enshrined in the robust Bill of rights in the Constitution. I need not over-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR** that:

“...the phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the Constitution.”

[8] I note that the report filed paints the accused as high tempered, prone to anger and violent person and dreaded within the community. The report also noted that at first, witnesses had refused to come out for fear of reprisals from the accused. These things portend likelihood of intimidation of witnesses. And such is a compelling reason for which an accused may be denied bail. Accordingly, I deny the accused bail. He shall remain in custody until this case is concluded. For that reason, the case shall be fast-tracked. It is so ordered.

Dated and signed at Meru this 28th day of February 2018

F. GIKONYO

JUDGE

Dated, signed and delivered in open court at Meru this 28th day of February 2018

A. MABEYA

JUDGE