



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO.28 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARK MUNGATHIA.....1<sup>ST</sup> ACCUSED**

**DAVID MAKENDA MURIIRA.....2<sup>ND</sup> ACCUSED**

**RULING**

[1] The accused persons are charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code CAP 63 of the Laws of Kenya. On 2<sup>nd</sup> October 2014, the 1<sup>st</sup> accused person application for bail was rejected by Lesiit J the court having found that the accused was a flight risk and therefore not a suitable person to be released on bond.

[2] On 21<sup>st</sup> September 2017, Ms Thibaru Learned Counsel for the accused persons sought review of bond terms and urged the court to consider releasing the accused persons on bond and impose stringent conditions if need be. On the other hand Mr. Namit, counsel for the state, in opposing the application contended that the situation had not changed and that the accused persons will jeopardize witnesses. He argued that evidence of key witnesses should be secured first.

**DETERMINATION**

[3] It has been said times without number that, by dint of the Constitution of Kenya, 2010, all offences are bailable. And the right to be released on bail on reasonable conditions is specifically provided in Article 49 (1) (h) of the Constitution. Only presence of compelling reasons shall prevent an accused person from being released on bond. There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons 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. The standard is high and draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of Rights enshrined in the Constitution. I need not over-emphasize these matters except to cite the case of **R vs.JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[4] I am aware this is the 2<sup>nd</sup> application for bail by the accused as the 1<sup>st</sup> one had been rejected by Lesiit J on 2<sup>nd</sup> October 2014. According to an affidavit filed in court on 23<sup>rd</sup> November 2017 by the investigations officer, Inspector Kipkurui Serem, the alleged offence occurred on 3<sup>rd</sup> July 2013 after

which the accused persons went into hiding. All efforts to find the accused persons were in vain. It was not until 25<sup>th</sup> April 2014, that the accused persons were apprehended. During the period that the accused persons were at large, the victims family suffered as they kept on complaining of the injustice herein. This forced the police to use considerable resources in particular, they engaged combined effort of the regular police, criminal investigations division officers and intelligence in tracking down the accused persons. He further contended that he was apprehensive that if the accused persons were released on bond their attendance in court would not be guaranteed, for they have no fixed abode, thus, a flight risk. He averred further that key prosecution witnesses resides in the same locality with the accused persons and were likely to come in contact with them.

[5] The foregoing averments in the affidavit by the Investigating officer remained unchallenged. There is nothing, say, an affidavit to rebut the said depositions. In light thereof, the possibility of the accused persons absconding if released on bond is not a remote possibility. Applying the test of the law, I am convinced that there are compelling reasons not to release the accused persons on bond. Accordingly the accused persons' application for bail is hereby rejected. Accused persons will remain in custody until this case is heard. It is so ordered.

**Dated, signed and delivered in open court at Meru this 22<sup>nd</sup> day of February 2018.**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Kinyua for State

Mr. Munene advocate for M/s. Thibaru for both accused persons

Accused 1 – present

Accused 2 - present

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**F. GIKONYO**

**JUDGE**