

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.45 OF 2017

REPUBLIC.....PROSECUTOR

Versus

PETER MWEBIA.....ACCUSED

RULING

[1] On 24th July, 2017, Mr. Ashaba, legal counsel for the accused person, applied for him to be released on bond. The court called for a pre-bail report on him. According to the Pre-bail report filed on 23rd September 2017, the accused is likely to interfere with the security of the members of the family of the deceased. The report states that the accused, while in remand continued to threaten the mother of the deceased through mobile number 0791072550. Details of the phone calls made to the phone of the mother of the deceased were given. In addition, the report states that he is likely to interfere with witnesses. That is not all. He is a flight-risk, for he has been away from home for over three years. This is an indication that his attendance in court may not be guaranteed.

DETERMINATION

[2] I have considered this application. Needless to state that, by dint of the Constitution of Kenya, 2010, all offences are bailable. More specifically, Article 49 (1) (h) thereof provides that an arrested 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. There may not be a scientific measure of what exactly amounts to compelling reasons as each case is determined on its own facts. Except, however, compelling reason should be a reason or reasons which is/are of strong, 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 it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be justifiable in a democratic society and should not touch the very core of the right as enshrined in the robust Bill of rights in the Constitution. Sufficient justification of denial of bail must therefore be given by the prosecution. I need not over-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[4] Applying the test, the interviews conducted by the probation officer revealed that the family of the deceased could be in danger at the hands of the accused. It shows that threats through phone calls were made by the accused to them. Again, there is every likelihood that the accused will interfere with witnesses. His attendance in court cannot also be guaranteed. Accordingly, I find that these are compelling reasons for which the accused person should be denied bail. As a consequence, his application for bail is denied. He shall remain in custody until this case is finalized. It is so ordered.

Dated, signed and delivered in open court at Meru this 13th day of February, 2018

.....

F. GIKONYO

JUDGE

In the presence of:

Mr. Murage for State

Mr. Wamache advocate for Mr. Munene advocate for accused

.....

F. GIKONYO

JUDGE