

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.98 OF 2017

REPUBLIC.....PROSECUTOR

Versus

MORRIS MWENDA GUANTAI.....ACCUSED

RULING

[1] The accused person is 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. When the accused person appeared for plea taking on 14th December 2017, the court directed that a pre bail report in respect of the accused person be filed within 14 days.

[2] According to a pre bail report filed in court on 17th January 2018, the accused person was said to be of good reputation prior to his arrest with the present case and was said to be hardworking and cooperative. His family members had a positive account of his past life records maintaining that he had never been in conflict with the law and were willing to bail him out if released on bond while acknowledging that the matter was still very fresh in the minds of members of the community and the fact that the accused was almost lynched. As would be naturally expected, the deceased's family members were said to be emotional and were against the release of the accused person on bond. Community members were not receptive to release of the accused person on bond though they confessed that they did not know the accused person as a criminal.

DETERMINATION

[3] 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 that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Thus, the standard is high for it 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 aver-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[4] The pre bail report painted the accused in good light and the accused person was said to be a person of good reputation prior to commission of this offence. It was however contended that there was a likelihood of the accused person being lynched if released on bond since his motor bike was torched to ashes by members of the public after commission of this offence. If such state of affairs was allowed to continue the same is unacceptable in this day and age as the same would lead to anarchy since the same would be tantamount to allowing members of the public to take the law in their own hands. From the circumstances of this case and save for the fear of the accused being lynched there was no strong opposition to release of the accused person on bond. Applying the test of the law, I am convinced that there are no compelling reasons not to release the accused on bond. Accordingly the accused person may be released on a bond of Kshs 200,000 with a surety of a similar amount or in the alternative a cash bail of Kshs 100,000.

Dated, signed and delivered in open court at Meru this 12th day February, 2018.

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F. GIKONYO

JUDGE

In the presence of:

Mr. Otieno advocate for Mr. Omari for accused.

Mr. Namiti advocate for State.

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F. GIKONYO

JUDGE