



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.47 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MUTHEE.....1ST ACCUSED

SAMUEL KABERIA MUTHEE.....2ND 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. The accused persons have sought to be released on bail pending the hearing and determination of this case.

[2] According to pre bail reports filed in court on 1st November 2017, the community was opposed to release of the accused person on bond as they could not understand why the accused persons could go for an innocent cripple for a reason which could not be proved. With respect to the 2nd accused, it was stated that he had fled from the scene and was later arrested one hundred kilometers away into the jungle with intelligence gathering facilitated by the local administration. he was also said not to have a fixed abode as their home e was burnt down.

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] According to the pre bail report, the accused persons attacked the deceased who said to be a cripple for no apparent reason. With respect to the 2nd accused he was said to have fled from the scene and was arrested hundreds of kilometers away. The possibility of him absconding if released on bond can therefore not be ruled out. Applying the test of the law, I am convinced that there are compelling reasons not to release the accused on bond. Accordingly the accused persons application for bail is hereby rejected. Accused will remain in custody until this case is heard.

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

.....

F. GIKONYO

JUDGE

In the presence of:

Mr. Otieno Advocate for Muriuki advocate for 1st accused

Mr. Otieno Advocate for Gitonga Advocate for 2nd Accused

Accused 1 and 2 – present

.....

F. GIKONYO

JUDGE