



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO.29 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSEPH GIKUNDI MUGAMBI.....APPLICANT**

**RULING**

[1] The accused person, who 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 has applied to be released on bond or bail pending the hearing and determination of this case. His legal counsel, M/S Muna argued that the accused is entitled to bail as a right and that he will attend court during the hearing of his case. She also stated that the reason given, to wit, that the family of the deceased has expressed desire to take revenge on the accused as unlawful and therefore not compelling reason as per the Constitution. She asked the court to look at the other murder case separate from this one. She therefore asked the court to release the accused on bond.

[2] The State opposed the application for bond, and Mr. Namiti, the Learned State Counsel, relied on the pre-bail report herein. He concluded that from the reasons given, the attendance of the accused in court is not guaranteed as the situation on the ground is volatile. He added that the accused has another case of murder at Wajir where he was denied bail. He therefore, urged the court to deny the accused bail.

[3] The pre-bail report filed states that his immediate relatives as well as those of the deceased strongly opposed his release on bond for reasons that: (1) that he is a perennial offender; and (2) is facing another murder charge at Garissa Court for allegedly killing his wife. The community is still threatening to take revenge on him if released. His father and the area chief confirmed these matters. Now I should place these matters on the legal scale.

**DETERMINATION**

[4] 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 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. 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 rout the very core of the

right as enshrined in the robust Bill of rights enshrined 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.**

[5] Applying the test, the interviews conducted by the probation officer revealed that the family of the deceased threatened to take revenge on the accused. It also shows that the accused is dreaded person for his vicious tendencies of committing crimes. I do not have any definite evidence on this propensity. However, although details of the criminal case were not provided, it was not disputed that the accused is facing another murder charge in Garissa. Legal counsel simply stated that the case should be viewed separate from this one. I should state that, whereas each case should be looked at on its facts, such matters as the accused has been denied bail in another case pending in court, is a relevant consideration in an application for bail. And when I couple that fact with the findings by the probation officer, I see a compelling reason emerging. In addition, the danger to the accused person is likely to hinder his attendance in court. I have, however, lamented before that the public should take the law into their hands, but it is becoming real that some members of the public have the tendency of killing accused persons upon being released on bond. I am therefore satisfied that there compelling reasons not to release the accused on bail. His application is denied and he shall remain in custody until this case is finalized. It is so ordered.

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

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr.Namiti for State

Mr. Munene advocate for Kiogora Advocate for accused

Accused - present

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**F. GIKONYO**

**JUDGE**