



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.63 OF 2017

REPUBLIC

Versus

ENOCK MUGAA.....1ST ACCUSED

DOUGLAS KIRIMI.....2ND ACCUSED

NICKSON MWIRIGI.....3RD ACCUSED

RULING

All offences bailable

[1] Verily, verily, verily it is true. By dint of the Constitution of Kenya, 2010, all offences are bailable; quite a departure from the previous position of law where capital offences were not bailable. See Article 49 (1) (h) of the Constitution which 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. No scientific measure of what exactly amounts to compelling reasons; that would depend on the circumstances of each case. Except, now courts seem to be agreed that compelling reason for which a person will be denied bail should be rousing, strong, one that 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 draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given that the Bill of Rights enshrined in the Constitution is a robust one and quite protective. I need not aver-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[2] 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 1st and 3rd accused were on 13th February 2018 released on bond after the court found that there were no compelling reasons to deny them bond. The 2nd accused person has now sought to be released on bail pending the hearing and determination of this case.

[3] Before the court considered the 2nd accused person application for bond, it asked for a pre-bail report. I will therefore the report and the law in my decision. Is there any compelling reason which may prevent the court to release the 2nd accused person on bail?

[3] According to the pre-bail report, the father of the 2nd accused person was non-committal on his son’s release on bail because the accused person had refused to go back to school and he will not be able to control him. His former employer was not also willing to take him back. His two brothers were said to be unavailable as they were employed in Nyeri as farm attendants. The contents of the pre-bail report remained unchallenged. Nonetheless, Mr. Nyerire for the accused person urged the court to grant the 2nd accused bail despite the contents of the pre-bail report and urged the court to impose stringent conditions. I also note that the community was of the view that the 2nd accused being a minor ought to be under the care and control of his parents. I cannot agree more. Applying the test of the law, the father should provide care and direction to his son. The son should also be obedient. But, there is a squirm here. On one hand, there is the father who says he cannot control his son. On the other hand, there is a minor who needs care and protection. In balancing these realities, it is not fair to deny the accused person bail. Accordingly, I am convinced that the 2nd accused should be released on bond but on specific conditions. He will therefore be released on bond upon an undertaking by the 2nd accused that:- (1) He will avail himself in court on all appointed dates, and (2) He will attend before relevant children’s officer every fortnight until further orders of the court. His father will also sign an undertaking to avail the accused in court. I am aware he bears parental responsibility towards his child and he cannot run away from it. It is so ordered.

Dated, signed and delivered in open court at Meru this 20th day of March 2018

F. GIKONYO

JUDGE

In the presence of:

M/s. Athieno advocate for 3rd accused

Msr. Wamache advocate for Nyenyire advocate for 1st and 2nd accused

Mr. Namiti for state

F. GIKONYO

JUDGE