



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.83 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS KABERIA KIBURI.....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. He has applied to be released on bond, pending the hearing and determination of this case.

[2] He is entitled to be released on bail upon reasonable conditions unless there are compelling reasons not to release him. See Article 49 (1) (h) of the Constitution. Are there reasons which make the court strongly feel that the accused should not be released on bond? I will apply the high standard set out in the Constitution and as was enunciated in the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[3] According to the pre-bail report, the accused person is said to have a criminal record. He is said to have committed a crime at Kinanduba which made him come back home supposedly to hide. He is also said to be a bhang smoker and had also threatened the assistant chief once. Community members who were interviewed expressed mixed reactions towards the release of the accused person on bail as some were not aware of his previous history for he had been away from home for some time, and those aware of his past life were apprehensive that his release would pose danger to his life- he risked being punished for what he did. The local administration reported that the accused had been reported to their office previously.

[4] The family of the accused was also interviewed and seems to support his release. They stated that they are ready to stand him surety except that their land at Igembe does not have title deeds. According to them, their son has never been involved in any anti-social behavior and they doubt he was involved in this offence.

[5] The Pre-Bail Report stated that there is possibility of him being punished by the public in the event he is released on bond. This forces me to repeat what I stated in **R vs. COLLIATUS GACIATA COSMAS [2017] eKLR** on this uncouth behavior of lynching suspects thus:-

I also note of the threat to the accused by the family of the deceased who have stated categorically that they will kill the accused if he is released. Such conduct is primitive and has no place in modern Kenya where rights of the accused person have been clearly enshrined in

and protected by the Constitution; and life is sacrosanct. Even if the family of the deceased has pain following the death of their kin- and naturally this is the case- vicious tendencies towards accused persons cannot be justified; it merely creates a feeling of dreariness in the court. Our society should know that it is only a court of law which can lawfully find a person guilty and mete out a sentence thereto. Again, our society should know that this country is governed by the rule of law and no one should take the law into his or her own hands whatever the circumstances. In any event, societies should re-engineer themselves and be prepared to rehabilitate the offenders into productive persons in society rather than cast them away in the manner I have experienced in various parts of the country. Civic education is also necessary towards that end. And I hope the government, religious and faith based institutions, Law Society of Kenya, human rights organization and civil society to mention a few will be fully engaged in this noble exercise and eradicate these barbaric tendencies. Nonetheless, I consider the danger to the accused to be of vital bearing on this case and may as well inadvertently induce absconding by the accused. In sum, there is possibility of the accused absconding. This is a compelling reason under article 49(1) (h) of the Constitution for which a person may be denied bail or bond. Accordingly, I deny him bail. He will remain in custody until case is heard or if circumstances change. It is so ordered.

[6] Upon careful consideration of all the factors in the case, and despite the alleged threat to the accused, I do not find any compelling reason not to release the accused on bond. However, circumstances cited in the pre-bail report require that his safety and attendance in court should be guaranteed by a suitable surety. The accused may reside in safe place in order to obviate any danger to his life from his own community. I will therefore order his release on bond of Kshs. 200,000 with one surety of like amount. For reasons given, I will not give an option of cash bail. It is so ordered.

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

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F. GIKONYO

JUDGE

In the presence of:

Mr. Wamache advocate for Anampiu for Accused

Mr. Namiti for State

F. GIKONYO

JUDGE