

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 83 OF 2017

REPUBLIC.....PROSECUTOR

Versus

JOTHAM MAWIRA.....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. The accused person has now applied to be released on bond, pending the hearing and determination of this case. Of course it is his right to be released on bond on reasonable conditions unless there are compelling reasons not to release him See Article 49(1) (h) of the Constitution.

[2] I am not aware of any 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. The standard is quite high and 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. On this, see the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[3] The pre-bail report recorded that the accused person has been associated with criminal activities of the same magnitude. The sub chief stated that the accused integrated badly with other people in the community and was a threat to peace. His own family members were not ready to bail him out saying he had disappeared from home a long time ago and was therefore a flight risk. Although there was no evidence of the criminal activities the accused engaged into, there is nothing negates the contents of the pre-bail report. There is real possibility of the accused absconding. Therefore, his attendance in court is not guaranteed. Such is a compelling reason for which bail may be denied. Applying the test of the law, I am convinced that there are compelling reasons not to release the accused on bond. Accordingly the accused person's application for bail is hereby rejected. Accused person shall remain remanded in custody pending the hearing and determination of this case.

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

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

Non appearance for accused

F. GIKONYO

JUDGE