

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 45 OF 2016

REPUBLIC.....STATE

VERSUS

PATRICK BAARIU M'IKIUNG'A.....1ST ACCUSED

MOSES MWIKA KINGE.....2ND ACCUSED

JOHN KIIRI M'ERIMBA.....3RD ACCUSED

REUBEN KABERIA M'IKIUNGA.....4TH ACCUSED

R U L I N G

1. The applicants are facing a Murder charge contrary to *section 203 as read with section 204 of the Penal Code Cap 63, Laws of Kenya*. It is alleged that on 18th July, 2016 at Kiolo Kiamuuti sub-location, in Igembe Central of Meru County, they murdered Robert Munene Kimbira. They denied the charge when they took plea on 5th September, 2016.

2. The applicants first applied for bond on 15th November, 2016. The same was opposed by the prosecution. At the time, Court called for pre-bail reports from the probation officer. Detailed pre-bail reports were filed in court on 28th February, 2017. The said reports revealed, inter alia, that members of the public had burnt the homesteads of the applicants after the murder of the deceased. The safety of the accused could not then be guaranteed if released on bond. Accordingly, the applicants were denied bail at the time.

3. The applicants have once again taken out a Motion on Notice dated 18th December, 2017 for bond. Each of the applicants swore an affidavit in support of that application. The gist of their affidavits was that; all of them are relatives, that having been arrested their homes remained with no one to take care of the homes; that it would take some time before their case is heard and determined due to the number of cases pending in court. They all expressed the willingness to abide by all and any terms and conditions that may be imposed for the grant of bond.

4. When the matter came up for hearing on 1st February, 2018, the court directed that the state do file and serve a Replying Affidavit within 30 days. The probation officer was likewise directed to file fresh pre-bail reports within 30 days. As at the time of writing this ruling, neither the Replying Affidavit nor any pre-bail report has been filed. In this regard, the court has to determine the said application on the material before it.

5. No doubt bail/bond is a constitutional right to every accused person. Under *Article 49 (h) of the Constitution*, bond is to be denied if there are **“compelling reasons not to be released”**. There is no definition of what compelling reasons are. These however, may include that the accused is a flight risk, that the security of the accused can not guaranteed, the likelihood of interfering with the prosecution witnesses *et al*.

6. In the present case, the accused were denied bond about a year ago. Amongst the reasons for such denial was that the home environment was at the time hostile. Indeed, their homes had been burnt down by the villagers as a result of the incident. There is nothing on record to show whether the situation has changed. However, the court gave both the prosecution and the probation office an opportunity to inform the court of these facts but both failed.

7. In the circumstances, there being no compelling reasons, I allow the application and admit the four accused to bond. They may be released on personal bonds of KShs.300, 000/- each and a surety of a similar amount.

It is so ordered.

DATED and **DELIVERED** at Meru this 19th day of March, 2018.

A. MABEYA

JUDGE