



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. 10 OF 2018

(CONSOLIDATED WITH HCCR NO. 12 OF 2018)

REPUBLIC.....APPELLANT

-VERSUS-

ONESMUS KIOKO MUTISYA.....1ST RESPONDENT

NICODEMUS NYAMASIO SILA.....2ND RESPONDENT

BENEDICT MUTUKU KATUA.....3RD RESPONDENT

ANTHONY MWANZIA.....4TH RESPONDENT

FLORENCE KATHUE MBILI.....5TH RESPONDENT

BONIFACE MULEI MBILI.....6TH RESPONDENT

RULING

INTRODUCTION

1. In a consolidated charge dated 30/07/2018 the six accused persons are jointly charged with offence of murdering Jackson Mutune Masila on 29/03/2018 at Kiambani village, Kiu location, Makindu Sub-county, Makueni County.
2. Through their advocates, they applied to be released on bail/bond on reasonable terms including cash bail.
3. On 02/07/2018, the court ordered the probation officer to file pre-bail/bond report on the accused persons.
4. The same reports were provided under the Judiciary bail/bond policy guidelines of March 2015 in the following words;

A bond Report is social inquiry report based on information generated about the background and community ties of an accused person to assess the likelihood that the accused person will appear for trial, and enable the court to impose a reasonable bail terms and conditions.

5. The accused person case is that the report filed on them by the probation officer are favourable and the probation officer recommended the accused's application for bail/bond be considered. They have pledged to abide by the reasonable bond/bail terms which the court may impose.
6. The prosecution opposes the application principally on the ground that "she was informed by the DCIO of the area that the accused persons are likely to interfere with the witnesses.
7. Under general principles on bail/bond decision- making the same is informed by principles derived from international best practices which *inter alia* prescribe that about determination must balance the rights of the accused persons and interest of justice.
8. That whereas accused is entitled to preservation of his liberty, to be presumed into court and be allowed to keep the fabric of his/ her life

intact e.g. maintaining his employment, family and communities, preserving the liberty of the accused person also permits him/her to take an active part in the planning of his/her defense.

9. On the other hand the state as has a duty to ensure public safety between time of arrest and trial of accused persons
10. This means that where there is convincing evidence that an accused person may undermine the integrity of crime justice system by e.g. intimidating witnesses or interfering with the evidence then a need arises to deny such a person bail or bond or set stringent bail/bond terms.
11. Equally, where there is convincing evidence that the accused person will endanger a particular individual (e.g. a victim of crime) or the public at large or even commit a serious crime, it becomes necessary to subject accused person to pre-trial detention.
12. The interests of justice therefore demand the protection of investigation and prosecution process against probable hindrance by accused persons.
13. It is therefore important for police and judicial officers to appreciate that the public have an interest in the effective prosecution of offences.
14. In appreciating the need to balance the rights of an accused persons with interest of justice, the constitution states that accused person can only be denied bond/bail where the court establishes that there are compelling reasons not to be released.
15. That is while the constitution stipulates that every person is presumptively entitled to bail/bond, it permits the denial of bail/bond where the prosecution presents convincing evidence to justify such denial.
16. In denying an accused person bail/bond, it must therefore be demonstrated with convincing evidence that his/her release will present risks and such risks cannot be managed, even with the attachment of appropriate conditions.
17. The prosecution has not demonstrated by presenting convincing or compelling evidence that the accused person will interfere with witnesses.
18. The only word before the court is from the bar stated by the state counsel that *“The DCIO informs her that the accused person will interfere with the witnesses.”* Where is the of the same? Which witness will be interfered with by which accused?
19. It is not enough to make such a bare statement. The DCIO ought to have sworn an affidavit and set therein convincing evidence of the possibilities of the accused person potentiality of interfering with the witnesses.
20. The court therefore finds that the application for bail/bond is meritorious. The applicants/accused persons seek to be given reasonable bail/bond terms with an option of cash bail.
21. Mr. Mwinzi has cited four authorities in his bundle of authorities where the court in murder case cash bail has been awarded ranging from Kshs.50,000/= to Kshs.1 million.
22. In **Meru High Court Criminal Case No. 42/2014 Republic -Vs-Daniel Bundi** the accused was awarded cash bail of Kshs.50,000/=.
23. In **Kitui High Court Criminal Case No. 6/2015, Republic -Vs- Willi** cash bail of Kshs.400,000/= was granted.
24. In **Kakamega High Court Criminal Case No. 4/2015, Republic -Vs- Dominic Multangani** a cash bail of kshs.1 million was granted.
25. In **Nyeri High Court Criminal Case no. 8/2016, Republic -Vs- D.K Mwangi** a cash bail of Kshs.500,000/= was granted.
26. In our circumstances it is urged that the accused persons are either small farmers or boda boda riders/operators whose income or means are low and there area has no tittles as land is yet to be registered.
27. Doing the best I can in the circumstances, I make the following orders:-
 - 1) **The application for bail/bond is allowed.**
 - 2) **The bail/bond terms are as follows:-**
 - a) **Each accused person shall sign a bond of Kshs.200,000/= with one surety of equal amount in alternative.**
 - b) **Each accused person shall deposit cash bail of Kshs.70,000/=.**
 - 3) **The accused person once released on bond/bail shall be reporting to the local DCIO every one month starting from the first week of the subsequent month after release until further orders of the court.**

Orders accordingly.

SIGNED, DATED AND DELIVERED THIS 31ST DAY OF JULY 2018, IN AN OPEN COURT.

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HON. C. KARIUKI

JUDGE