

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.33 OF 2018

REPUBLIC.....PROSECUTOR

Versus

WILSON MUTUMA.....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. When the accused person appeared for plea taking on 14th May 2018, the court directed that a pre bail report be filed in court within 21 days for the purposes of ascertaining determining whether the accused person should be released on bail/bond.

[2] According to a pre bail report filed in court on 9th July 2018, the accused's own father, immediate relatives and neighbours talked ill of him saying that he was a criminal and black sheep to the family and neighborhood at large. His own family strongly opposed his release on bond saying that he should remain in remand prison for other family members to breathe a sigh of relief. The deceased and the accused are siblings. The community expressed similar sentiments that the accused was a thorn in the flesh due to his criminal conduct in the community and that everyone now was at peace now that he is in confinement.

DETERMINATION

[3] Under Article 49 (1) (h) of the Constitution of Kenya, 2010, an accused person has a right to be released on bail or bond on reasonable terms unless there are compelling reasons not to release him. What amounts to compelling reason depends 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 in light of the high standard set by the Constitution which draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified. I need not aver-emphasize these matters except to cite the case of **R vs.JOKTAN MAYENDE & 3 OTHERS [2013] eKLR.**

[4] The pre bail report painted the accused in very bad light. His own father and immediate family members were strongly opposed to his release on bond/bail. The community also expressed similar sentiments especially that the accused had been a thorn in their flesh and everyone was now at peace following his current confinement. I have nothing before me which would make me disbelieve the contents of the pre bail report. Although Mr. Igweta, legal counsel for the accused person stated that the report does not reveal any compelling reason, it is my view that the circumstances on this case are such that: (1) the there is high possibility that the accused will interfere with witnesses; and (2) there is absolutely no any guarantee that the accused will attend court during his trial. I will explain these conclusions. His own family expresses fear and does not support his released. The family cannot even give any guarantee of his attendance for he is dreaded as a dangerous person and one who abuses drugs especially bhang. Again, these family members are the witnesses in the case for the deceased was a sibling of the accused. Given, these expressions by his family, the possibility of him interfering with witnesses and absconding are real. 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 shall remain in custody pending the hearing and determination of this case.

Dated, signed and delivered in open court at Meru this 24th day of September 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for accused

Mr. Mungai for Igweta for accused

F. GIKONYO

JUDGE