



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO.1 OF 2017**

**AGNES MUROCHIA KAMUNYA.....1<sup>ST</sup> ACCUSED**  
**PATRICK KINOTIKAMUNYA.....2<sup>ND</sup> ACCUSED**  
**JEREMIAH KAILIKIA KAMUNYA.....3<sup>RD</sup> ACCUSED**  
**PHENIAS KINYUA KAOME.....4<sup>TH</sup> ACCUSED**  
**DAVID KINYUA MUGAMBI.....5<sup>TH</sup> ACCUSED**  
**MARY KANARIO KAMUNYA.....6<sup>TH</sup> ACCUSED**  
**DOMICIANOKOBI AKITIBO.....7<sup>TH</sup> ACCUSED**

**Versus**

**REPUBLIC.....RESPONDENT**

**RULING**

**Right to bail**

[1] On 30<sup>th</sup> March 2017, Mr. Kaimenyi, defence counsel applied for the accused persons to be released on bail. In order to determine the bail application, the court ordered for pre-bail report to be filed within 14 days. Now the reports have been filed. Mr. Mungai, the prosecuting counsel argued that the reports capture the community's view and hostility. He stated that upon arrest of the accused, the DCIO had to arrange for special security in order to transport the accused to court because the community wanted to lynch the accused. On that basis, he urged the court to find that there compelling reason to deny the accused bail. But, he was of the view that the matter should be heard expeditiously because the 6<sup>th</sup> accused has a little child with her in remand.

[2] Mr. Kaimenyi took a different view of the reports. He argued that the findings by the report do not support the conclusions reached. He further contended that the community and family of the victim will always be opposed to release of the accused on bail. He suggested that the accused will relocate to another place where they will be safe. Therefore, the reports do not reveal compelling reasons to deny the accused bail. He beseeched the court to admit the accused to bail.

## **DETERMINATION**

[3] One theme runs through all the reports by the probation officer; bitterness, bitterness, bitterness. The family of the deceased expressed extreme bitterness toward the accused and will not entertain their release on bond. The community also especially the touts who were working with the deceased expressed extreme bitterness with the accused, they are hostile to the accused and those who were interviewed were categorical that a sighting of any of the accused person will result into their being killed. This scenario is quite unpleasant and may be reminiscent of the savage ruffians whose talent was to take the law into their own hands and commit heinous killing in the name of mob-justice. Such attitude should not be heard in a civilized society of the 21<sup>st</sup> century. In a society which pride in the rule of law, such threats to life are backward notions. It is about time we re-engineered the society into believing in the rule of law and cast away anarchy of the type I am hearing here. Nonetheless, is the danger to the accused a compelling reason in the sense of the Constitution?

[4] In the case of **R vs. KOKONYAMUHSSIN [2013] eKLR** the court stated the following:-

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### **Danger to accused person**

**In some instances, the Prosecution has argued that the accused should not be released on bail due to the security of the accused. They normally cite hostile circumstances surrounding the case. This is a rather difficult ground to prove, but I do not want to slam the door on it or proclaim its potency or its prospects being minimal as a compelling reason under Article 49 of the Constitution. Except, it is for the court to evaluate the entire circumstances of the matter and decide whether it qualifies as a compelling reason to deny the accused bail. Initially the Prosecution alluded to political hostility and rivalry between two political factions, and the accused belongs to one of the warring factions, thus making the security of the accused to be at stake. That state of affairs is quite unfortunate at a time of elections. However, the Prosecution seems to have abandoned that ground and did not argued it as a compelling reason, and I have not been called upon to decide on it. So the less I say about that ground at this stage the better. Nonetheless, I recognize there is need for a more searching debate on this ground as a compelling reason to refuse bail under the Constitution.**

[6] Applying this test and also borrowing from Chesoni J (as he then was) in the case of **Ng'ang'a vs. Republic 1985 KLR 451**I should ask:

#### **1. Whether the security of the accused will be guaranteed if released.**

Mr. Kaimenyi stated that his clients may re-locate to safer places. The suggestion sounds alright but two things are amiss. It may bring in other complications especially of attendance in court as the accused will be living as fugitives in their own country. Again, the security of the accused is not guaranteed by re-location. Note that connectivity in technology has made then world a small village and any place could be vulnerable. In my view, the evidence show that there is real likelihood of harm being visited upon the accused by the community especially of the touts who worked with the deceased and also by the family of the deceased. This is a potent and compelling ground for which bond may be denied. Except, however, I am acutely aware that such hostility is not permanent. It may subside and the danger it portends eliminated altogether. Therefore, I am convinced there are compelling reasons to deny the accused bail. Accordingly, the accused persons shall remain in custody as this case is heard. I direct also that the case be heard expeditiously. However, should circumstances change, the accused may re-apply. This decision is just intermediate and I may revisit the issue again after three months if this case will not have been heard and determined. It is so ordered.

**Dated, signed and delivered in open court at Meru this 31<sup>st</sup> day of May 2017**

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**F. GIKONYO**

**JUDGE**