

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.34 OF 2017

JOSEPH KIMATHI.....1ST ACCUSED

LAWRENCE MASON.....2ND ACCUSED

DON MUGAMBI KIMATHI.....3RD ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING

[1] On 2.5,2017 the accused persons applied for bail.The accused have a right to be released on bail upon reasonable terms unless there are compelling reasons to deny them bail. In order to reach a just decision on bail, the court requested for a pre-bail report to be filed in court within 14 days. It also ordered the prosecution to file an affidavit if at all they believed there are compelling reasons to deny the accused persons bail. No affidavit has been filed. But, pre-bail report on each accused person was filed in court on 25th May 2017. The pre-bail reports state that there is no strong opposition to the release of the accused persons on bail as the area assistant chief even indicated that there is danger to the accused persons. Except, however, the pre-bail report on the 1st accused indicated that he had threatened a witness called R M aged 6 years when he realized that the boy had recorded a statement with the police in connection with this case. The pre-bail report, however, recommends the 1st accused to be considered for bail after the said minor witness has testified. What does the law say about Interference with or threatening of witnesses by the accused?

[2] Interference with or threatening of witnesses by the accused is a compelling reason for which bail may be refused. See a work of court in the case of **R vs. Jakton Mayende [2012] eKLR** that:

For purposes of Article 49(1) (h) of the Constitution, a compelling reason hinged on interference with witnesses does not necessarily require strict medical proof of, where assault is claimed as the act of interference with witnesses since the court is not determining a criminal charge of assault the way we know it in a criminal trial. Where there is evidence that a person is accosted, physically or otherwise, by an accused person in the case where the person is a witness, it suffices to prove that the accused did act(s) tending or intended to interfere with a witness. The court is then entitled, if not bound, to infer that the intention of the accused in accosting the witness had been to dissuade the witness from giving evidence. Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give shewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice. For greater understanding of this position of the law see the case of **R vs. KELLET [1975] 3 All ER 468.**

[3] Applying the above test, I will defer the request by the 1st accused to be released on bail until the said minor witness has testified or has received such appropriate protection. In this connection, I order that the said minor shall testify during the next appointed date.

[4] As for the other accused persons, there is no compelling reason to justify their continued detention in

remand while this matter is pending hearing. Accordingly, I order that the 2nd and 3rd accused person shall each be released on;cash bail of Kshs. 100,000 or bond of Kshs. 200,000 with one surety of like amount. It is so ordered.

Dated, signed and delivered in open court at Meru this 29thday of May 2017

F. GIKONYO

JUDGE