



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO.59 OF 2013**

JOSEPH MWENDA IKIUNGU.....ACCUSED

Versus

REPUBLIC.....RESPONDENT

**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 matter came up for hearing on 27<sup>th</sup> March 2017, Ms. Nelima for the accused person applied for the accused to be released on bail pending the hearing and determination of this case. The court subsequently directed that a pre-bail report be filed within 14 days for the consideration of the court in the bail application.

[2] According to a pre bail report filed in court on 9<sup>th</sup> May 2017, the accused person was said to have previously exhibited criminal behavior and it was always whispered in low tones that he had strangled his wife to death. The report also stated that his own family expressed that he was not their kin and did not want to be associated with him. The community was strongly opposed to the release of the accused person on bail. The area chief is reported to have stated that villagers were shocked when the incident happened since the suspect has been in hiding for a long time after he was suspected of killing his wife. After the incident, the villagers had armed themselves with the aim of revenge. As would be naturally expected, the deceased's family members were strongly opposed to the release of the accused on bail and it took the intervention of the area chief for them to accept to be interviewed.

[3] Mr. Mungai Learned State Counsel for the state urged the court to consider the pre-bail report when determining the application for bail.

**DETERMINATION**

[4] I have considered this application, submissions by counsels and the pre bail report. Only where compelling reasons have been established that a person will be denied bail. See Article 49 (1) (h) of the Constitution. Has the prosecution shown any compelling reason which would make the court feel very strongly that the accused should be denied bail? The pre-bail report painted a pale picture on the release of the accused person on bail. The fact that the accused had gone into hiding for a long time portends he could be a flight risk. The hostility from the community may also be a source of danger to him which again increases the chances of his absconding. I note that the report stated that nobody in the accused's family wanted to be associated with him and therefore little information was gathered about his family. Again, this is an important consideration. All those interviewed were opposed to the release of the accused person on bail. Taking into consideration all the circumstances in this case and the reasons alluded to above; I find that there are compelling reasons not to release the accused person on bail. Accordingly, the accused person shall remain in custody during the hearing of this case. It is so ordered.

**Dated, signed and delivered in open court at Meru this 27<sup>th</sup> day of July 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

M/s. Nelima advocate for accused person

Mr. Mungai State Counsel for respondent

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**F. GIKONYO**

**JUDGE**