

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NO. 3 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

RICHARD MUTHUI MULI.....ACCUSED

RULING

The accused who has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code has applied for bond orally through his counsel Mr. Wambugu.

Counsel submitted that the accused was arraigned in court on 11th February 2014 and has been in custody since then. He is a 68 years man with serious health issues especially in the left eye. He also suffers chest ailments. In addition, he is a family man and some people had taken advantage of his stay in custody and were encroaching on his land at home.

The Principal Prosecuting Counsel Mr. Okemwa, does not object to grant of bond. His position is that the investigating officer has not provided compelling reasons for denial of bond. Counsel however is of the view that appropriate conditions be given to ensure the accused attends court.

I have considered the application for bond/bail and the submissions of counsel for the accused and the State.

Since the promulgation of the Constitution of Kenya 2010, bail has become a Constitutional right applicable to all offences. Prior to this, bail was available only to those not charged with capital offences.

Under article 49(b) of the Constitution of Kenya 2010, the only reason why bail can be denied is compelling reasons. Courts have held that the burden is on the prosecution to provide those compelling reasons. In my view however, those compelling reasons can also be used to deny bail, if the court becomes aware of them. In every case however, those compelling reasons must be clearly stated in the decision for deny bail.

The Principal Prosecuting Counsel has stated that there are no compelling reasons to deny bail. I do not see any myself. In the result I will grant bail to the accused, on certain conditions.

Consequently, I allow the application and order as follows:-

1. The accused may be released on signing his own bond of Ksh.400,000 with one surety of similar amount.
2. In the alternative, he may be released on payment of cash bail of Ksh.300,000.
3. He will not interfere with prosecution witnesses
4. He will attend every hearing and mentioning of the case.

Dated and delivered at Garissa on 27th July, 2017.

GEORGE DULU

JUDGE