



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO.78 OF 2016**

**MARTIN KATHURIMA.....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 4<sup>th</sup> May 2017, Mr. Ojiambo for the accused person sought to have the accused person 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 to assist the court to establish whether there were compelling reasons not to release the accused on bail. According to a pre bail report filed in court on 30<sup>th</sup> June 2017, the accused person was accused of murdering his own father and the community had a negative impression of him and so could not see any reason to afford him any sympathy. The accused was regarded as a drug (bhang) addict and a violent person whose presence instilled fear to the locals. The accused was alleged to have served prison sentences in the past over unspecified offences and admitted to having been sentenced for six months for assaulting his own father (the victim herein). Due to his violent behavior, villagers regarded him as “animal” and his own relatives were not willing to stand surety for him. The local administration felt that his release on bail would create fear to the witnesses.

[2] In view of the above, the probation officer was of the opinion that the accused person should not be released on bail.

**DETERMINATION**

[3] I have considered this application, submissions by counsels and the pre bail report. Under the new constitutional dispensation all offences are bailable unlike in the old constitution where capital offences were not bailable. Article 49 (1) (h) of the constitution provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released. But the Constitution does not define what compelling reasons are or give a catalogue of such instances which amount to compelling reasons. Nevertheless, each case will depend on the circumstances. Courts have also embarked on a journey to define this term “compelling reason” and I am content to cite decisions by Odero & Nzioka JJ, and Majanja J in separate decisions in **MSA HC CR APPL NO 66A & 66B OF 2011 MOHAMED ABDULRAHMAN SAID & ANOTHER V REPUBLIC [2012] e KLR**, and **NBIHC JR MISC APP NO 271 OF 2011 WILSON THIRIMBA V DPP [2012] e KLR** respectively, where it was observed;

**Once again we will turn to the Concise Oxford Dictionary 9<sup>th</sup> Edition where the ordinary English meaning of the term compelling is given as “rousing, strong, interest attention, conviction or admiration”.**

[4] Applying the foregoing test, the accused person is said to have murdered his own father. He was generally feared by members of the community where he lived and none of his immediate family members was ready to stand surety for him. The accused admitted to having served a six months jail sentence previously for assaulting his father (the victim of this offence). Again, possibility of him interfering with witnesses who are his close relatives is real. 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. The application for bail is therefore denied. The accused person shall remain in custody pending the hearing and determination of this case. It is so ordered.

**Dated, signed and delivered in open court at Meru this 25<sup>th</sup> day of July 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Mungai state counsel – for state

Mr.Otieno advocate for Ojiambo advocate for accused

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**F. GIKONYO**

**JUDGE**