

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.28 OF 2017

REPUBLIC.....DPP

Versus

AMOS MWENDA.....1ST ACCUSED

PATRICK KOBIA ALIAS MUTUTHO.....2ND ACCUSED

RULING

[1] The accused persons were on 3rd May 2017 granted a cash bail of Kshs 100,000 or in the alternative a bond of Kshs 200,000 with a surety of a similar amount. The 1st accused was subsequently released after his surety was approved on 5th May 2017. The 2nd accused is still in custody and has through his counsel sought reduction of the cash on the basis that the land in her area is not valuable. Ms Namiti on the other hand contended that the bail was sufficient and could be served through other alternative than land, for instance log book of motor vehicles etc.

DETERMINATION

[2] I have carefully considered this application and the rival contentions by the parties. Under Article 49 (1) (h) of the Constitution, bond or bail should be on reasonable conditions. What amounts to "reasonable condition" is at the discretion of the court. Except, however, the amount of bond or bail shall have due regard to the circumstances of the case and shall not be excessive or unduly restrictive of the enjoyment of the right to bail. Applying this test, given the serious nature of the offence of murder, cash bail of Kshs. 100,000 or bond of Kshs. 200,000 is reasonable. I should state that other alternatives such as log books for motor vehicles may also act as surety. It need not be land only. However, I am aware of the "Bail and Bond Policy Guidelines" published in March 2015 which acknowledges review of bail/bond terms as part of the fair action by courts in the criminal justice system. I will also consider that the pre-bail report filed in respect of the accused person favored his release on bond/bail. Similarly, I will take into account that the 2nd accused has not been able to raise the bond for over 5 months now. Based on these reasons, I will reluctantly reduce the cash bail to Kshs. 75,000 or bond of Kshs. 150,000 with one surety of similar amount. The 2nd accused person shall be released on those terms. It is so ordered.

Dated, signed and delivered in open court at Meru this 21st day of September 2017

F. GIKONYO

JUDGE

In the presence of:

Mr.Namiti for State

Mr. Ojiambo advocate for Thibaru advocate for 2nd accused

F. GIKONYO

JUDGE