

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.38 OF 2015

REPUBLIC PROSECUTOR/DPP

-VS-

THOMAS MBAABU M'MUGA..... ACCUSED

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. On 9th October 2015 Wendoh J granted the Accused his own bond of Kshs. 300,000 with one surety of the same amount. She was of the opinion that the Accused is not a flight risk and there was no any other compelling reason disclosed that would warrant the court to deny him bond.

[2] On 27th March 2017, the Accused made an oral application for the reduction of the bond. His advocate stated that the bond was too high and requested for it be reduced to Kshs. 100,000. Mr. Mungai for the Republic was of the view that the amount set should be retained for it was sufficient. The court initially referred the application to Wendoh J as the good judge was still sitting in Meru. But on 8th May 2017, Wendoh J gave directions that this should deal with the application for the review of bond. I will proceed on that basis.

DETERMINATION

[3] 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. Whereas there is nothing to show that the amount of the bond is excessive or unreasonable, there is new realization; that since 2015 when the bond was granted, the accused has remained in custody for inability to raise the amount of bail granted. This is a long period of time which eliminates any pretense or machinations to cause reduction of the bond. And as the court was convinced that the accused is not a flight risk, and the whole purpose of bail is to allow the accused to enjoy his liberty under the Constitution while at the same time procure or guarantee the attendance of the accused during his trial, I am persuaded to reduce the bond. Accordingly, the accused shall be released on a bond of Kshs. 150, 000 with one surety of the same amount. It is so ordered.

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

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

Mr.Ojiambo advocate for Mr. Kiogora for accused

F. GIKONYO

JUDGE