

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO 59 OF 2016

REPUBLIC

Versus

MARTIN MUREITHI.....ACCUSED

RULING

Bail

[1] On 18th September, 2017, M/S Atieno the legal counsel for the accused person applied for her client to be released on bail. She argued that the prosecution did not state how they arrived at the adverse conclusion that the accused could prejudice the trial. The prosecution did not oppose release of the accused on bond, except they insisted that stringent conditions should be given for the accused did not have a fixed abode and was likely to prejudice the trial.

DETERMINATION

[2] I have considered the pre-bail report dated 3rd June 2017. It recommends the accused to be considered for release on bond with adequate security. I note from the report that the accused comes from a stable Christian family. He is said to be a hardworking and honest person. He is said to be a dear of fellow villagers for taking care of his aged parents. Although he is said to be a drunkard, but contrary to the submission by the prosecution, the accused has a known abode. I find nothing in the report which indicates that he is a flight risk. Therefore, there is absolutely nothing which would prevent the release of the accused on bond or bail upon reasonable terms. There is no compelling reason to deny him bond or bail. I am aware that the Constitution in article 49(1) (h) commands that a person should be released on bond or bail on reasonable conditions. This phrase ‘‘reasonable condition’’ is still under judicial interpretation. Nevertheless, what amounts to reasonable condition is at the discretion of the court but as dictated by the circumstances of each case. Therefore, in setting the terms or conditions of bail or bond as well as the amount thereof, the court should have due regard to the circumstances of the case and should never impose terms or conditions or amounts which are unreasonable or excessive or punitive conditions or as to be restrictive of the enjoyment of the right to bail. Thus, reasonable conditions should always be granted except in cases where there are exceptional factors, appropriate or stringent conditions may be imposed. Exercise of this discretion should be seen in light of the real purpose of bail or bond; to allow the accused have his freedom but at the same time procure or guarantee his attendance in the trial. In this case, I do not find any exceptional circumstances so as to impose stringent conditions as submitted by the prosecution. Accordingly, I order that the accused shall be released on cash bail of Kshs. 100,000 or bond of Kshs. 200,000 with one surety of similar amount. It is so ordered.

Dated, signed and delivered in open court at Meru this 20th day of September 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

M/s. Atieno for accused

F. GIKONYO

JUDGE