



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO.35 OF 2017**

REPUBLIC.....PROSECUTOR

Versus

MOSES GITONGA MITHIKA.....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. Mr. Wamache applied for the accused person to be released on bail/bond pending the hearing and determination of this case. The State through Mr. Mungai requested the court to call for a pre-bail report. The Pre-bail report was filed on 24<sup>th</sup> July 2017.

[2] The pre bail report filed in court paints the accused as an alcoholic who led a careless life that negatively affected his relationship with his wife and parents. This was corroborated by the area chief who informed the probation officer that the accused person had a poor relationship with all the other family members because of alcoholism. His father welcomes the idea of the accused person being released on bond. But none of the family members expressed any willingness to stand him surety to secure his possible release. The deceased person in this case was said to be a one old month baby and the third son to the accused and except for his father, all the other people interviewed were opposed to the release of the accused person on bond as they said the accused and his father can easily intimidate witnesses and especially the mother to the deceased who was his wife.

[3] When Mr. Wamache Learned Counsel for the accused person was informed that the pre-bail report was not positive towards the release of the accused person on bond, he simply stated:

***“Family members are not opposed to him getting bail. Give him bail.”***

**DETERMINATION**

[4] By dint of the Constitution of Kenya, 2010, all offences are bailable. More specifically, Article 49 (1) (h) thereof 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. There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Thus, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently

justified given the robust Bill of Rights enshrined in the Constitution. I need not aver-emphasize these matters except to cite the case of **R vs.JOKTAN MAYENDE & 3 OTHERS [2013] eKLR.**

[5] According to the pre-bail report, all those interviewed except the father of the accused were opposed to the release of the accused person on bond. The reason given is that the accused person and his father could easily intimidate the witnesses especially the mother of the deceased child. The mother of the one-month old baby who met his untimely death in this incident is the wife of the accused. The report also painted the accused as an alcoholic. I will tie this to the fact that none of his family members expressed any willingness to stand him surety if he is released. All these averments remained uncontroverted and give a clear indication that the accused is likely to interfere with witnesses especially the mother of the deceased who is also his wife. Such close family relationship between the accused and witnesses portend real challenges and possible interference of witnesses. This is an important consideration in matter of bond. Applying the test of the law, I am convinced that there are compelling reasons not to release the accused on bond. Accordingly the accused's application for bond is hereby rejected. 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 27<sup>th</sup> day of November, 2017.**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Mungai for State

Mr. wamache – absent for the accused.

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**F. GIKONYO**

**JUDGE**