



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.50 OF 2017

REPUBLIC.....PROSECUTOR

Versus

SAMUEL MUGAMBI KAMONGO.....ACCUSED

RULING

Uncouth conduct: Will lynch accused if released

[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. Mutegi 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 23rd October 2017.

[2] The pre bail report filed in court paints the accused person as an idler, a villagebully and a habitual offender. It is said that he had served a jail term before. But, no specific case in which he was tried and convicted was cited. The Report further stated that there is high possibility of him being lynched by the public in the event he is released on bond. This forces me to repeat what I stated in **R vs. COLLIATUS GACIATA COSMAS [2017] eKLR** on this uncouth behavior of lynching suspects thus:-

I also note of the threat to the accused by the family of the deceased who have stated categorically that they will kill the accused if he is released. Such conduct is primitive and has no place in modern Kenya where rights of the accused person have been clearly enshrined in and protected by the Constitution; and life is sacrosanct. Even if the family of the deceased has pain following the death of their kin- and naturally this is the case- vicious tendencies towards an accused persons cannot be justified; it merely creates a feeling of dreariness in the court. Our society should know that it is only a court of law which can lawfully find a person guilty and mete out a sentence thereto. Again, our society should know that this country is governed by the rule of law and no one should take the law into his or her own hands whatever the circumstances. In any event, societies should re-engineer themselves and be prepared to rehabilitate the offenders into productive persons in society rather than cast them away in the manner I have experienced in various parts of the country. Civic education is also necessary towards that end. And I hope the government, religious and faith based institutions, Law Society of Kenya, human rights organization and civil society to mention a few will be fully engaged in this noble exercise and eradicate these barbaric tendencies. Nonetheless, I consider the danger to the accused to be of vital bearing on this case and may as well inadvertently induce absconding by the accused. In sum, there is possibility of the accused absconding. This is a compelling reason under article 49(1) (h) of the Constitution for which a person may be denied

bail or bond. Accordingly, I deny him bail. He will remain in custody until case is heard or if circumstances change. It is so ordered.

[3] I find it really puzzling that society, on one hand, has accused a person for committing crime of murder, and have committed him to the law; yet, on the other hand, the same society is craving for revenge upon the accused and is ready to kill him. Is it strange that they will be committing the same offence for which they have accused him? What an oxymoron? What a **sharp contrast of virtue? Is this an expression of loyal deceit?** Isn't this society governed by the Constitution which it passed in exercise of its sovereign power and authority? And is society not supposed to bow to the Constitution? I should think strongly that societal paradigm shift is needed in order to eliminate incidents where an accused person is to be denied bail for fear that members of his society will lynch him.

[4] The foregoing notwithstanding, I will place the facts of this case on the scale of law. Needless to state that, 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 arousing, 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 over-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR.**

[5] Applying the test, I am convinced that the safety of the accused cannot be guaranteed once released. The court is not acting out of fear but on a conscientious restraint not to test the ground with the life of the accused. Therefore, I find that there is a compelling reason not to release the accused on bond for now. Accordingly the accused's application for bond is hereby rejected. I am aware that such circumstances are only temporal, and therefore, the accused may renew his request for bail after six months or as soon as the circumstances change. 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 21st day of November, 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

Mr. Igweta advocate for Mr. Mutegi advocate for accused.

F. GIKONYO

JUDGE