



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.51 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS MARITWA IKIRIMA.....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. Kithinji 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 9th October 2017.

[2] The pre bail report filed in court paints the accused as a very dangerous person. Social inquiry revealed that the extended family has a history of murder cases and the accused's nephew was said to be in custody facing murder charges. The accused was said to have a history of criminal activities and it was alleged that he raped and killed his own mother and child who was said to be physically challenged. The area chief confirmed that the accused was involved in several assaults. It was stated that the accused's compound was deserted and none of his close family members was found. The other family members among them sisters in law appeared not to be bothered by the accused involvement in this offence and narrated that he had been involved in many criminal activities and that it was time for him to pay for his crimes. They were unwilling to bail him out because they said that he was a target of community wrath; at the time of the arrest his house was burnt down. They all concurred that there was a very high risk of being lynched upon release.

[3] In response to the contents in the pre-bail report, Mr. Kithinji for the accused person stated that the accused was a 1st offender and that the allegations in the pre-bail report were baseless.

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 over-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[5] The pre bail report painted the accused in very bad light. Social inquiry revealed that the extended family has a history of murder cases and the accused's nephew was said to be in custody facing murder charges. The accused was said to have a history of criminal activities and it was alleged that he raped and killed his own mother and child who was said to be physically challenged. The area chief indeed confirmed that the accused was involved in several assaults. The accused's compound was said to be deserted and none of his close family members was found. The other family members among them sisters in law appeared not bothered by the accused involvement in this offence and narrated that he had been involved in many criminal activities and that it was time he pays for the same. No record of criminal conviction was however produced. Nonetheless, I note that the family of the accused is unwilling to bail him out as he is said to a target of community wrath and may be lynched if he is released. The Report further stated that there is high possibility of him being lynched by the public in the event he is released on bond. Once again I find myself being forces 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.

[6] The foregoing notwithstanding, I note that, at the time of the arrest, his house was burnt and all persons interviewed including his family concurred that there was a very high risk of him being lynched upon release. Save for Counsel for the accused person stating that the contents in the pre-bail report were baseless; there was no any affidavit filed to rebut these allegations. The contents of the pre bail report remained unchallenged and I see nothing which would make me disregard them as material factors herein. 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 19th day of December. 2017

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F. GIKONYO

JUDGE

In the presence of:

Mr. Kithinji advocate for Accused person

Mr.Kinyua for State

Accused - present

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F. GIKONYO

JUDGE