



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.32 of 2014

TITUS KIMATHI MUREA.....1ST APPLICANT

STANELY MUREA NTOKIRARI.....2ND APPLICANT

VS

REPUBLIC.....RESPONDENT

RULING

The applicants are 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**. By a Notice of Motion Application brought pursuant to **Article 49 (1) (h) of the Constitution of Kenya** and **Section 357 of the Criminal Procedure Code CAP 75 of the Laws of Kenya**, the applicants have sought to be released on bail pending the hearing and determination of this suit.

The gist of the application is that given the nature of this case it may take long to conclude and the applicants have a line of dependants who entirely depend on them and that their continued detention may jeopardize their welfare.

The application was opposed. Mr. Mulochi, Counsel for the State, in opposing the application sought to rely on an affidavit sworn by PC Joseph Masango, the investigations officer in this case who deposed *inter alia* that all the key prosecution witnesses reside in the same locality with the applicants and therefore there is a high possibility that if released on bail the applicants will interfere with witnesses thus undermining the prosecution's case; that given the severity of sentence, the accused persons were likely to abscond if released on bond and that there was hostility on the ground against the accused persons and that there was a possibility of the accused persons being lynched.

Even though an arrested person has Constitutional right to bail/bond pursuant to **Article 49 (1) (h) of the Constitution (2010)**, the said right is not absolute because bond will be denied if there are compelling reasons. The constitution does not define what compelling reasons are, and therefore each case will depend on its own circumstances. The court will normally consider the guiding principles set out in the case of **Ng'ang'a vs. Republic 1985 KLR 451** when the court considered as follows:

1. **Whether the accused will turn up for his trial.**
2. **The seriousness of the charge.**

3. Character and antecedents of the accused person.

4. Whether the security of the accused will be guaranteed if released.

The court has considered the affidavits and the pre-bail reports.

In the instant case it was contended *inter alia* by the prosecution that there was a possibility of the accused persons interfering with witnesses since they came from the same locality. This was however not proved and contrary to the prosecution's assertions the pre-bail reports were positive indicated that all those interviewed except the victims brother were positive of the accused persons being released on bail. The Chief and members of the community who were interviewed were willing to stand surety for the accused persons; they talked well of the accused persons whom they described as humble and not being in conflict with the law before.

Considering the foregoing, I find that there are no compelling reasons as to why the applicants should not be released on bail.

In the circumstances, I allow the application and grant the accused persons bond of Kshs.100,000/= and a surety of a similar amount each.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF FEBRUARY, 2016.

R.P.V. WENDOH

JUDGE

23/2/2016

PRESENT

Mr. Wanyoike for State

Mr. Wamache Holding Brief for Mr. Otieno for Accused

Ibrahim/Peninah, Court Assistants

Both Present, Accused