

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCR NO. 32 OF 2015

(FORMERLY MERU HCCRA 44 OF 2014)

GEOFREY GITONGA NKONGE ...APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

R U L I N G

1. Nathan Runji Nyaga the accused was on 30th June, 2014 charged with two counts of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on 16th June, 2014 at Ngunga village, Kiaritha within Tharaka Nithi County, the accused murdered Fidea Igoki and Naomi Wamugo. He denied the charges.
2. On 21st September, 2015, the accused applied for bond and the court ordered for a pre-bail report. When the same was presented, it was negative and the bond was declined. On 5th October, 2015, Ms Kaaria Advocate was appointed to represent the accused. On 25th February, 2016 when the matter came up for taking a date for hearing, Learned Counsel for the accused, once again applied for bond on behalf of the accused. Mr. Ongige for the state did not oppose the same. The court once again ordered for a fresh Bail/Bond report to establish the social circumstances prevailing at the accused's community.
3. Bail or bond is a constitutional right of every accused person. The liberty of any person in this country is precious. That is why Article 49 of the Constitution of Kenya guarantees every accused person the right to be released on bond or bail on reasonable conditions. The only caveat to that right is if there are compelling reasons for an accused not to be released. There is no statutory definition of what these compelling reasons are. In my view however, these may include if the accused is a flight risk; if there is a danger of the accused interfering with the prosecution witnesses; if there is a likelihood of the accused repeating the offence or if the safety of the accused is not guaranteed if released. All these are meant to guarantee a fair trial. If there is anything that might prevent the accused from attending and participate in his trial, in my view, that is a compelling reason under Article 49 of the constitution. For that reason, a threat to his safety or wellbeing is or can be said to be a compelling reason. If the accused is harmed or his health interfered with, it may be difficult to say that he will be accorded a fair trial if he stands trial in a terrified or, anxious state or if his health is interfered with.
4. The state is not opposed to the release of the accused on bond. The pre bail report indicates that the offence facing the accused occurred in a family set up. The deceased were related to the accused. They were a step-grand-mother and her daughter. From the report, the victim's family is still bitter; the grandsons of the deceased are still embittered and are said to have threatened to shoot one of the accused's relatives because of the subject incident.
5. In view of the foregoing, although there is an indication that if released on bail the accused will be moved away from his home, this court feels that it is unsafe to release the accused to a hostile environment at this stage. When the safety of the accused is not guaranteed, I hold it to be a compelling reason not to release the accused. Accordingly. The application for bond is declined, the trial shall proceed and be expedited.

DATED and Delivered at Chuka 21st day of March, 2016.

A.MABEYA

JUDGE

Court:

Ruling read and delivered in open court presence of:-

Mr. Kijau H/B for Ms Kaaria for Accused.

A. MABEYA

JUDGE

22/3/2016