



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 11 OF 2016

DOUGLAS MUTIGA MURIUKI 1ST APPLICANT

STEPHEN URIUKI BAIBAYA 2ND APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The accused persons 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 dated 17th February 2016, the applicants have sought to be released on bond/bail pending the hearing and determination of this suit.

The gist of the application is that the accused persons have a Constitutional right to bond; are presumed innocent till proved guilty; are permanent residents of Meru County and not flight risk; that they will abide by any bond/bail terms set by the court.

The application was opposed. Mr. Mucholi, Counsel for the State in opposing the application sought to rely on an affidavit sworn by Inspector Hussein Osman Bachu, the Investigation Officer in this case. He deposed inter alia, that the local community was enraged after the incident; that they burnt down accused's house worth over 2.5 million shillings and that the community is still angry; that the lives of the accused persons may be in danger if released on bail. He further deposed that the 2nd accused person went into hiding but later presented himself at Meru Police Station.

Before the court considered this application, it called for pre-bail reports. According to the said reports, filed in court on 15th March 2016, the deceased's family was still bitter with what happened and the matter was still fresh in their minds bearing in mind that it happened recently and they seemed to have in-depth objection to the accused persons being released on bail/bond. The pre-bail report indicates that there are divided views from the community on whether or not accused could be released on bond.

In the case of ***Ng'ang'a v Rep 1985 KLR 451***, the Court of Appeal enunciated the principles to be considered by the court in considering whether to release an accused person on bail/bond or not. The court has to consider;

1. Whether the accused person 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;

5. Whether accused will interfere with witnesses.

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, under since the same provision, an arrested person shall not be released if there are compelling reasons. Again, the Constitution does not define what compelling reasons are but ordinarily, they will include the principles considered above and each case will depend on its own special circumstances.

From a reading of the pre-bail reports, the accused persons have been of good character in the society with no known anti-social behavior. In fact, the 2nd accused is said to be a civil servant well respected in society.

I have considered the affidavits and the pre-bail report. The averments in the Investigation Officer's affidavit were confirmed by the probation officer in his report where he stated that the community invaded the 2nd accused's home and burned the same and that after the commission of the offence, accused 2 presented himself at Meru Police Station from Kibirichia where he works. There is evidence however, that accused 2 has another home where, if released, he can reside during the pendency of this case. It is away from the area where the offence was committed and hence no likelihood of facing revenge from the community. The family members of the accused are all willing to stand surety for them and in my view, they are not flight risks.

Unlike what the Investigation Officer deponed to that accused 2 went underground after the commission of the offence; the pre-bail report avers that it is accused 2 who presented himself to the Police Station the next day.

From a consideration of the affidavits and pre-bail reports, I find that there are no compelling reasons to deny accused persons bond. I grant bond in the following terms:

1. Each accused may be released on bond o KShs.200,000/= with the surety of like sum or cash bail of KShs.100,000/=.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF APRIL, 2016.

R.P.V. WENDOH

JUDGE

25/4/2016

PRESENT

Mr. Mulochi for State

Mr. Onderi for accused

Ibrahim/Peninah, Court Assistants

Present, Acused