



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 59 of 2014

A M.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

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.**

By a Notice of Motion Application dated 16th December 2015, the Applicant has sought to be released on bond/bail pending the hearing and determination of this suit.

The gist of the application is that the accused person has an unqualified constitutional right to be released on bond/bail on reasonable conditions and that he is not aware of any compelling reason within the meaning of **Article 49 (1) (h) of the Constitution of Kenya 2010** as to why he should not be released on bail/bond.

The application was opposed. Mr. Mulochi for the State in opposing the application sought to rely on an affidavit sworn by Corporal John Kilonzo the investigation officer who deposed inter alia that the attack on the deceased was unprovoked, unwarranted and unnecessary and that the accused person heinously killed his father over a dispute concerning connection of water pipes in their family farm and that the accused person was taken for a psychiatric test at Meru Level 5 Hospital after his arrest for which he was diagnosed with a mental disorder known as schizophrenia and that as a result of the said condition the accused person poses a threat to other members of the public and himself if released on bail.

Before the court considered this application, a pre-bail report was called for. According to the pre-bail report filed in court on 8th March 2016, the accused person was said to be an irresponsible person and that he had no children or spouse. The accused person's own siblings were all against the accused person being released on bail stating that he had been threatening the elder brother and the mother and that he had even threatened to burn the mother's house. The community members were said to be so bitter with the accused and that they would have lynched him had he not surrendered himself to the police.

I have considered this application, submissions by counsel and the pre bail report. Chesoni J (as he then was) in the case of ***Ng'ang'a v Rep 1985 KLR 451*** enunciated the principles to be considered by the court in deciding whether to released an accused person on bail/bond as inter alia 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.**

Even though an arrested person has a Constitutional right to bail/bond pursuant to **Article 49 (1) (h) of the Constitution (2010)**, the said right is not absolute. Under the same provision an arrested person shall not be released if there are compelling reasons to deny him bond. The Constitution does not define what compelling reasons are, and each case would depend on its own circumstances but bearing in mind some of the above stated principles.

I have considered the affidavits on record and the pre-bail report. The victim is accused's own father. None of the accused's siblings is willing to stand surety for him. The accused's siblings and mother are terrified of him due to his violent behavior. The local administration is of the same view. If released, harm may be done to him or he may cause more harm to others. I find that there are compelling reasons as to why the accused person should not be released on bail.

I decline to grant bond. The accused person shall remain in custody pending the hearing and determination of this case.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF APRIL, 2016

R.P.V. WENDOH

JUDGE

19/4/2016

PRESENT:

Mr. Mulochi for State

Mr. Omari Holding Brief for Mr. Kiogora for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused