



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 63 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

BENJAMIN KITHINJI 1ST ACCUSED

BENAR5D MUTURA 2ND ACCUSED

COSMAS KIRIMI 3RD ACCUSED

RULING

This application dated 11/3/2016 is brought by **Cosmas Kirimi, 3rd accused seeking** to be released on bond. It is the second application. The first one was rejected by this court on account of hostility of the community at home and the fact that witnesses might feel intimidated by the presence of the accused. The applicant has deponed that he has another home over 20 kilometres from where the offence occurred and it is unlikely that his life will be in danger.

The Prosecution opposed the application again for reasons that there is still hostility in the community against the accused and that his alternative home is very near that of the deceased and therefore his life may be in danger.

I have considered the two affidavits as well as the pre-bail report. The report indicates that there is still a lot of hostility against accused 3 where the incident occurred and where he had bought land and built a home which was razed down after the offence was committed. It is observed however, that the accused is very loved in his original home. Contrary to what the investigation officer stated, the pre-bail report indicates that the accused's home is over 20 kilometres from where the offence took place.

It is not uncommon that the deceased's family will never agree to an accused being released on bond. However, an accused is presumed innocent till proved guilty. In this case, the razing down of accused's home is indeed evidence that the community was enraged at the death. The pre-bail report still maintains that the situation is still volatile, 9 months after the occurrence. However, if the accused's home is 20 kilometres away from the scene of crime, then it is unlikely that the accused's life will be in danger. As much as the State is supposed to guarantee the security of its citizens yet the security machinery cannot be everywhere all the time and accused 3 has the duty of care owed to himself too. He has to take care of his personal security too.

For the above reasons, I will allow the accused's application but he must be a person of good conduct and

keep away from the area where the offence was committed pending the hearing of this case. I grant bond in the following terms:

- 1. The accused may be released on bond of KShs.300,000/= plus one surety of the same amount or cash bail of KShs.100,000/=.**
- 2. Accused to report to Maua Police Station every one month till further order of the court. If released, he should report to the Police Station after 7 days.**

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF MAY, 2016.

R.P.V. WENDOH

JUDGE

19/5/2016

PRESENT

Mr. Mulochi for State

Mr. Igweta Holding Brief for Mr. Ntarangwi for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused