



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 15 OF 2016**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**KIBUTHA M'AKWALU ..... 1<sup>ST</sup> ACCUSED**

**BENARD MUGAMBI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

The applicants face a charge of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. They now request this court to release them on bond/bail pending their trial. Each of them swore an affidavit in support of the application. The grounds upon which the application is made are that the offence is bailable; that they are not a flight risk as they have their families within Meru and will abide by any terms the court may impose. It was also deposed that accused 1 is ailing.

Mr. Mulochi, counsel for the State opposed the application relying on the affidavit sworn by the Investigation Officer PC Kipkurui Serem, who deposed that the accused are likely to interfere with witnesses if released; that other accomplices are still at large and they may conspire to defeat the case.

The accused persons have a right to bail as guaranteed under **Article 49 (1) (h) of the Constitution**. However, the said right is curtailed if there are compelling reasons to deny the accused persons bond. The court will normally consider the following principles in an application for bail:

- 1. Whether accused will turn up for his trial;**
- 2. Whether accused will interfere with witnesses;**
- 3. Whether accused's security is guaranteed;**
- 4. The antecedents and character of the accused.**

I have considered the affidavits filed by both parties hereto in light of the above principles. The court had also called for pre-bail reports in respect of both accused. When the Investigation Officer alleges that the accused are likely to interfere with witnesses, they have a duty to support the said allegation with evidence which they have not. It remains an unfounded allegation.

As to the allegation that other accomplices are still at large, in my view, the accused can still

conspire even when accused are in remand and that would not be a good reason to deny accused persons bond.

I have read the prebail reports and they are favourable to the release of the accused persons on bond. Accused are said to have been people of good character. The report also revealed that the offence was committed in December, 2015 and the accused were not arrested till 2 months later in February, 2016. During the two months the accused were living in the community, if at all they wanted to interfere with witnesses or abscond, they had ample time to do so.

For the above reasons, I find that there are no known compellable reasons that would warrant this court to deny the accused persons bond. I therefore allow the application and will grant the accused persons bond as follows:

Each accused may be released on **bond of KShs.250,000/= plus one surety of like sum or cash bail of KShs.75,000/=**.

**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> DAY OF MAY, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**17/5/2016**

**PRESENT**

Mr. Mulochi for State

Mr. Kaume for Accused

Ibrahim/Peninah, Court Assistant

Present, Accused