



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 83 OF 2014

JOHN NJUE NDWIGA 1st APPLICANT

JOHN NYAGA NJAGI 2ND APPLICANT

VERSUS

REPUB..... 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 two Notice of Motion Applications dated 16th December 2015, the accused persons have sought to be released on bail pending the hearing and determination of this case.

The applicants contend that they have an unqualified Constitutional right to be released on bail on reasonable terms and that they are not aware of any compelling reasons within the meaning of Article 49 (1) (h) of the Constitution of Kenya 2010 as to why they should not be released on bail/bond.

The application was opposed by Mr. Mulochi, Counsel for the State who relied on an affidavit sworn by PC Alex Kesses, the investigations officer. He deposed that the accused persons do not hail from Mutuati; that their home particulars were unknown; that he tried getting their identity cards but they did not furnish him with any. He therefore contended that the accused have no fixed abode and that they should not be granted bond since they are a flight risk.

The court called for pre-bail reports. According to the pre-bail reports filed in court on 11th April 2016, the same were positive of the accused persons who were said to be of good conduct. Members of the community where accused persons worked and the local administration were welcome to the idea of the accused persons release on bond since to them the accused persons led a legitimate lifestyle and were not a threat to the community. The family members of the deceased were said to be migrant workers from another district and were not traced to give their opinion on the matter.

In a bond application, the court considers the following principles:

- 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;**
5. **Whether the accused will interfere with witnesses.**

Though the investigation officer deponed that the accused's homes were unknown, the pre-bail reports did disclose that the accused come from Embu. Accuseds' relatives were interviewed by the Probation Officers and so were the local administration. For that reason, the accused persons are not a flight risk. So far, there are no compelling reasons to deny the accused persons bond. Each accused may be released on **bond of KShs.300,000/= plus one surety of like sum or cash bail of KShs.100,000/-**.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF MAY, 2016.

R.P.V. WENDOH

JUDGE

18/5/2016

PRESENT

Mr. Mulochi for State

Mr. Nyenyire Holding Brief for Mr. Manyara for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused