



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 8 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL KINYUA NCHEBERE.....1ST ACCUSED

DANIEL KAREITHI NCHEBER.....2ND ACCUSED

DICKENS MUNGATHIA KARIGI.....3RD ACCUSED

RULING

The 3rd accused person, **Dickens Mugathia** faces a charge of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. By an application dated 2/3/2016, the 3rd accused seeks to be released on bond on grounds that he has been in custody since his arrest on 9th February 2016; that the offence is bailable; that he is a resident of Meru where he has a family and he is not a flight risk and lastly that he is sickly.

The application was opposed. PC Joseph Ratemo, the Investigations Office swore an affidavit to the effect that after commission of the offence, accused disappeared from the area from 3rd January, 2016 till 6th January, 2016 when he was arrested from his hideout; that he is likely to interfere with witnesses and that the accused had before arrest, threatened the witnesses.

I have considered both affidavits sworn by both sides. The court also asked for a prebail report which it has considered.

The paramount consideration in an application for bond is whether the accused will turn up for his defence. Other considerations are the character of accused, whether the accused will interfere with witnesses and whether the accused's life will be in danger if released.

The Investigation Officer alleges that the accused will interfere with witnesses but in such an allegation, he must avail evidence in support thereof. None was availed. There was also an allegation that the accused went into hiding after the offence was committed but again, there is no evidence that the accused went underground. That allegation must have been supported by evidence which it was not.

The court called for a prebail report which I have considered. There are mixed reactions from the deceased's family and some members of the public. Whereas some do not object to the release of

accused on bond, some do. As is normal, the deceased's family will ordinarily object to the release of an accused on bond due to bitterness because of their loss. However, that is not a consideration to deny an accused bond. So far, I find no good reason to deny accused bond as no compelling reasons have been disclosed. In the end, I grant accused bond as follows: He may be released on bond of KShs.200,000/= plus one surety of like sum or cash bail of Kshs.50,000/=.

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

R.P.V. WENDOH

JUDGE

18/5/2016

PRESENT

Mr. Mulochi for State

Mr. Ashaba for Accused 3

Ibrahim/Peninah, Court Assistants

Present, Accused 3