

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 70 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MURIUNGI M'ITIMBURI.....ACCUSED

RULING

David Muriungi M'itimhuri faces a charge of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He has filed a Notice of Motion dated 24/2/2016 seeking to be released on bond pending the hearing of this case. He filed two affidavits in support of the case. He deponed that he has been advised that he has an unquantified right to bond since he is deemed innocent till proved guilty; that he is a resident of Maua, has a fixed abode and is not a flight risk and that he will abide by all the terms that the court may impose.

IP Antony Khaemba filed a replying affidavit dated 16/3/2016 opposing bond for reasons that the murder was committed on 27/4/2011 and the accused went underground till 29/9/2015, 5 years after the crime and therefore a flight risk; that the local community burnt his house and that he is likely to be harmed if released on bond; that the deceased was accused's nephew and the only witnesses are his relatives whom he is likely to interfere with.

In his replying affidavit, the accused denied having gone underground after the murder and also denied that his house was burnt or that there is any bitterness in the community against him.

I have considered all the affidavits on record and the pre-bail report. The primary consideration in an application for bond is that the accused will turn up for his trial. In this case, the IP opposed bond for reasons that the accused went underground from 2011 when the murder was committed till his arrest about 5 years later. In my view, the accused has not sufficiently explained to court where he has been from 2011 to date. The court cannot fear that the accused was not charged from 2011 to 2015.

On the allegation that the accused will interfere with witnesses, the duty lies on the prosecution to prove that indeed he will interfere with witnesses. The prosecution failed to do that.

I have considered the pre-bail report which favours the release of the accused on bond. However, the probation officer never addressed the issue of where accused was from 2011 to 2015. In my view, I would consider the accused a flight risk unless the contrary is shown.

For the above reason alone, I find that the accused may not turn up for trial if released on bond and I decline to grant him bond. Application is dismissed.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JULY, 2016.

R.P.V. WENDOH

JUDGE

26/7/2016

PRESENT

Mr. Mulochi for State

Mr. Mutegi for Accused

Ibrahim, Court Assistant

Present, Accused