



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL CASE NO. 38 OF 2016

REPUBLIC..... PROSECUTOR

VERSUS

BENJAMIN MWENDA KARAU ACCUSED

RULING

Benjamin Mwenda Karau faces a charge of **murder contrary to Section 203 as read with Section 204 of the Penal Code**. By the Notice of Motion dated 11/8/2016, he seeks to be released on bond. The applicant contends that bond is his Constitutional right; that he is presumed innocent till proved otherwise; that he is ready and willing to comply with any conditions that the court may impose; that he is not a flight risk and there are no disclosed compelling reasons to deny him bond.

The application was opposed and two replying affidavits were sworn by the Investigations Officer, IP Antony Khamala and another by a witness, Kennedy Gitonga. The Investigations Officer deposed that the accused is a flight risk because after the murder, he went into hiding from 26/2/2016 till his arrest on 2/7/2010 through community policing; that at the time of arrest, the public nearly lynched him and his life would therefore be in danger if released; that all witnesses are from within the accused's vicinity and they are apprehensive that if released, he would be a threat to them.

Kennedy Gitonga, a key witness in this case deposed that he witnessed the murder and he is afraid that his life may be in danger if the accused is released on bond and he therefore opposes the accused's release on bond.

In addition to the affidavits, the court called for a pre-bail report in which the deceased's family vehemently opposed the release of the accused on bond urging that the accused remain in remand during the trial. Whereas this court sympathizes with the deceased's family for their loss which makes them bitter, that is not a compelling reason to deny the accused bond. The accused is presumed innocent till proved guilty.

The offence was committed in February, 2016. According to the Investigations Officer, despite efforts to trace him, the accused went underground till he was arrested about 5 months later by community policing. The accused has not offered any explanation as to where he was for the 5 months he was being sought. He did not rebut that allegation. If he went underground till his arrest, it means that the accused is a flight risk.

Another affidavit is sworn by one of the witnesses who is apprehensive that his life will be endangered if the accused is released on bond which I find to be a legitimate concern. Again, the accused did not respond to that allegation that he may interfere with the witness who is a close neighbour.

I have seen the Probation Officer's report. Though the report was filed well after the replying affidavit was filed, the Probation Officer and the accused did not address their minds to the allegations that the accused went underground which tends to show that if he gets a chance, he will not attend court.

The accused's family, the community and administration from the accused's home area are not opposed to the accused's release on bond. However, it remains the discretion of the court to grant or deny bond taking into account all the circumstances. The primary consideration in such an application is that accused will turn up for his trial. Another one is that he will not interfere with witnesses and witnesses should not be left to live in fear of the accused.

I am satisfied that there are compelling reasons to deny the accused bond. I decline to grant the application. The Accused will remain in remand till the case is heard.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF OCTOBER, 2016.

R.P.V. WENDOH

JUDGE

27/10/2016

PRESENT

Mr. Mulochi for State

Mr. Muthomi Absent, for Accused

Ibrahim/Peninah, court Assistants

Accused, Present