



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL CASE NO. 24 OF 2014

REPUBLIC APPLICANT

VERSUS

JOHN MWINZI KINYIRI & 9 OTHERS RESPONDENT

RULING

This is an application for bail pending trial dated 10th February, 2015 filed by the ten (10) accused persons through their counsel Ngala Mulonzya and company. The application brought by way of Notice of Motion was filed under Article 49(h) of the Constitution of Kenya 2010.

It was filed with an affidavit sworn by the 3rd accused Eric Mulonzya Kinyiri on behalf of all the applicants.

Mr. Ngala who appeared at the hearing of the application for the accused persons, emphasized that two of the accused were minors. That one of the accused was pregnant. That all the 10 accused were members of one family and had left young children at home while in custody. Counsel asked for release of the accused on favourable bail terms, especially for the minor accused, and the accused who were women.

The learned Prosecution Counsel Mr. Okemwa did not oppose bail. Counsel submitted that accused number 5 and 10 were minors and were currently detained in the police station. Counsel emphasized that under Article 53(1)(f) of the Constitution of Kenya 2010, children could only be detained in custody in very exceptional circumstances. Counsel urged the court to release them and the woman accused person on favourable terms.

Counsel submitted that he did not have any compelling reasons to object to the release on bail on any of the accused persons. Counsel informed the court that he had talked to the investigating officer who had no compelling reasons. Counsel urged that the bond for the men should be granted on adequate conditions such as reporting to the DCIO every month and maintaining the peace during the pendency of the case. Counsel relied on the case of **Republic Vs. Danson Mugunya and Kassim S. Mohamed. Mombasa High Court criminal case No. 26 of 2008.**

I have considered the application for bail and submissions of counsel on both sides. The accused stand charged jointly with two counts of murder. They are alleged to have murdered Japhet Mwinzi Kinyiri and Ruth Kanini Kimanzi. The two charges are allegations. The accused are presumed innocent until proved guilty. Trial has not commenced.

Since the request for bail is not opposed, by the state and since I am not aware of any to security threats to

the lives of any of the accused, I will allow the application and release them on bail.

I have been asked by the counsel on both sides to give preferential bail terms to the minor accused persons and the woman.

I really find no need for that special treatment. I will treat all accused persons similarly.

I thus allow the application for bail pending trial and order as follows:-

1. Each of the accused will be released on his/her signing a bond of Kshs. 500,000/ with one surety of similar amount, or on payment of cash bail of Kshs. 200,000/-
2. Each will keep the peace,
3. Each will not interfere with or threaten any witness or any potential witness.
4. Each will attend trial and every the mention of the case.
5. I will proceed to fix a mention date and hearing date hereafter.

Dated and delivered at Garissa this 19th February 2015

GEORGE DULU

JUDGE