



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. 38 OF 2014
(CONSOLIDATED WITH HCCR 40 OF 2014)

REPUBLICPROSECUTOR

VERSUS

EVANS KIPRONO YEGON.....1ST ACCUSED

GEOFFREY KIPLANGAT RONO2ND ACCUSED

JULIUS KIPROTICH MUTAI3RD ACCUSED

R U L I N G

1. The three accused persons are facing a charge of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. They were first arraigned in court on **22nd October, 2014** and their plea was taken on **12th November, 2014**.
2. They have vide an application dated **16th December**, asked to be released on bond pending the hearing of this murder trial. The 1st accused has sworn an affidavit on his behalf and on behalf of the others (*Accused 2 and Accused 3*).
3. In the said affidavit they have deponed that they will abide by any conditions that the court may impose. They have further deponed that if released on bond they will attend court as required without fail.
4. The State opposed the application and filed a Replying affidavit by **Cpl. Richard Rotich** of Roret police station Litein.

In the said Replying affidavit the deponent raises the following:

- i. *The accused persons and the deceased's family stay in the same village and they know each other well.*
- ii. *There is a high level of tension between the families of the accused persons and that of the deceased. The release of the accused persons on bond would expose them to danger, as the family of the deceased are yet to come to terms with the death of the deceased.*
- iii. *The deceased's family is strongly opposed to the release of the accused on bond.*
- iv. *A suspect by the name Moses Mutai is still at large and its feared that if released on bond the accused persons will interfere with the deceased's family which is assisting them in tracing the said suspect.*

5. When the application came for hearing both counsels based their submissions on the affidavit evidence filed.

The application was brought under **Article 49** of the **Constitution**, which provides at **Sub Article(1)**
(h)

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released”

6. It is therefore the right of every arrested/accused person to be released on bail or bond and on reasonable conditions. This right is not however absolute. If there are any compelling reasons to make the court not allow the release on bond then this constitutional right may be limited.
7. The prosecution has the duty to demonstrate to the court the existence of any compelling reasons that would limit this right. In paragraph 4 above, I have outlined the reasons relied on by the State to oppose bond to the accused/applicants herein.
8. The issue is whether these amount to compelling reasons. I will analyze these reasons in the following sequence;

Para 4(i)

Being in the same village in itself is not a compelling reason for denial of bond. The State has not shown how this would interfere with witnesses and/or the course of justice in this case.

Para 4(iii)

It is not the deceased's or complainant's family to determine who should be released or not released on bond This would be a very dangerous reasoning to adopt.

Para 4(iv)

It is on record that on **22nd December, 2014** the State through **M/S Njenga** State Counsel requested for time to enable the police interrogate the accused persons in respect of a 4th suspect (*Moses Mutai*) who is and still at large. No material has been presented to this court to show that indeed the accused persons have information relating to the suspect's whereabouts.

It has also not been shown how the accused would interfere with the family of the deceased person in tracing the said suspect.

Para 4(ii)

It is true that the loss of a loved one brings a lot of grief and pain to their closest family members. This matter has been reported and suspects have been arraigned in court. It is not the duty of the deceased's family to take the law into their own hands to instill fear in the lives of others. They also have no right to avenge the death of the deceased by doing harm to the accused persons. They should allow the law to take its course. The state has a duty to provide security to all its citizens as provided for under **Article 238(2)** of the **Constitution**. The accused persons have not been said to be a security risk to anybody. The State cannot be heard to say that the accused should remain behind bars because some known Kenyans will harm them. It should instead take action against those who are bent on causing injury to others.

9. After analyzing all the material before me and the submissions, I find that the State has failed to lay before this court any compelling reasons to warrant denial of the accused persons' right to bail/bond.

10. I hereby allow the application dated **16th December, 2014** and grant bond to the accused persons on the following terms;

(i) A bond of Shs. 500,000/= to be executed by each of the accused persons.

(ii) Each accused to avail two sureties of Shs. 250,000/= each for approval by the Deputy Registrar.

Dated, signed and delivered this 18th day of February 2015.

H.I. ONG'UDI

JUDGE

In the presence of :

M/s Kivali for State

Mr. Orina for all accused - absent

Lagat – Court Assistant

All Accused persons