



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCCR NO. 13 OF 2004

REPUBLIC.....PROS

VERSUS

JOHN KIMATHI KABUTU.....ACCUSED

R U L I N G

1. The applicant JOHN KIMATHI, charged with the offence of murder through an application dated 7th April, 2014 brought pursuant to Article 49(i),(h) of the Constitution of Kenya, 2010 prays to be released on bail/bond pending trial and that court do set such terms as it deems necessary and expedient for the release of the accused.
2. The applicant's application is based on the grounds on the face of the application inter alia; that the accused person has a constitutional right to be released on bail/bond, that the accused shall strictly adhere to all terms and conditions that may be set by the court for his release, that the accused person shall attend court at the place and time set for hearing and for any other necessary purpose; that there are no compelling reasons as to why the accused person should not be granted bail, and that the accused relatives are ready and willing to stand surety for his release on bail.
3. The application is further supported by the supporting affidavit of the applicant in which the applicant has deponed that he has been in remand since 2004 and he is ready and willing to abide to all conditions that the court may deem necessary to impose for his release. That he shall avail himself to court or any other designated place as will be required by the court. That his relatives are ready and willing to stand surety to his release on bail or bond.
4. The state on the other hand is opposed to the applicant's application and have filed a replying affidavit sworn by No. 53138 Abdullah Mohammed the Investigating Officer; who has averred that the prosecution has a very good case against the accused which will most likely result in conviction and if convicted the applicant would suffer maximum sentence provided by law; that the deceased person's cruel death in the hands of the accused are still fresh in the minds of members of the deceased persons' family and need time to heal. That if bail is granted the accused will likely interfere with the witnesses thus undermining the prosecution's case; that after commission of the offence the accused went to hiding; that though the offence of murder is now bailable, the grant of bail is not absolute but a matter of discretion on part of the court and that detention is necessary in order to maintain the confidence in the administration of justice.
5. The court sought for pre-bail report from probation and after care service, Isiolo District Probation Office, the pre-bail report was filed on 11th July, 2014. The pre-bail report show that majority of the

people interviewed did not support granting bail to the accused person citing fears for his life, however his immediate family supports him to be released on bail and proposes that they can look for an alternative abode for him from the sake of his security.

6. Article 49(1),(h) of the Constitution of Kenya, 2010 provides as follows:-

“49. (1) An arrested person has the right—

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

7. Under the Constitution of Kenya, 2010 an offence of murder is bailable and an accused person has a right to be released on bond or bail on reasonable conditions pending trial unless there are compelling reasons not to be released.

8. The reasons for opposing the accused being released on bail by the state are based on strength of their case, gravity and nature of the offence, the sentence on conviction and security of the accused.

9. I have very carefully considered the applicant's application and grounds in support of the application as well as grounds advanced in opposition of the bail application. I have also considered the pre-bail report and in my view I am not satisfied that there are compelling reasons not to release the accused on bond or bail. I shall therefore exercise my discretion in favour of the applicant in this application.

10. The upshot is that the applicant's application dated 7th April, 2014 is granted. I therefore make the following orders:-

i. The accused be and is hereby granted bond of Kshs.700,000/- with one surety of similar sum or in the alternative accused be released on cash bail of Kshs.500,000/-.

ii. That upon release of the accused he shall be reporting to OCS Isiolo Police Station every Friday of the week till further orders of the court in default the OCS through DPP to inform this court for further orders:-

iii. This order be served upon OCS Isiolo Police Station for compliance.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN PRESENCE OF:-

1. M/S Kigira for State

2. Mr. Murithi for accused

3. Accused in present

4. C/clerk Penina.

J. A. MAKAU

JUDGE