



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO.42 OF 2014

REPUBLIC.....RESPONDENT

VS

DANIEL BUNDI.....ACCUSED PERSON

RULING

By a Notice of Motion Application dated 27th January 2015, the accused person has sought to be granted bail pending the hearing and determination of this suit. The accused has been charged with the offence of murder and the gist of the application is that the accused person has an unqualified Constitutional right to be released on bond or bail on reasonable terms; that he is not aware of any compelling reason within the meaning of Article 49 (1) (h) of the Constitution of Kenya 2010, as to why he should not be released on bond or bail.

The application was opposed. Mr. Mulochi Learned State Counsel, sought to rely on an affidavit sworn by Sgt. Naomi Bundi, the investigating officer in this case, who deposed inter alia, that key prosecution witnesses are well known to the accused person since they are his immediate relatives; that if he is released on bail/bond, the possibility is pretty high that he will interfere with witnesses; that there is high probability that the accused person may abscond upon conviction in view of the severity of the sentence he is facing and that his detention is necessary in order to maintain confidence in the administration of justice having regard to all the circumstances of this case. He further contended that the right to bail/bond as enshrined in the Constitution is not absolute and is at the discretion of the court.

I have considered this application, submissions by counsel, investigating officer's affidavit and the pre bail report. In **Ng'ang'a vs. Republic 1985 KLR 451.** The principles to be considered in a bail application were set out.

I am alive to the principles enunciated in the above stated case. The primary consideration is whether an accused person will turn up for the hearing of his case if released. Other considerations are whether an accused will interfere with witnesses; the seriousness of the offence and likely sentence and accused may commit other offences.

Even though an arrested person has a Constitutional right to bail/bond pursuant to Article 49 (1) (h) of the Constitution, the said right is not absolute since the same provision provides that an arrested person shall not be released if there are compelling reasons to deny him bond. Though the Constitution does not define what compelling reasons are, each case would depend on its own circumstances.

Although the prosecution alleged that the witnesses were immediate relatives of the accused person, it

was not possible to ascertain the same since copies of witness statements were not available; nor did the investigating officer specifically tell the court how each witness is related to the accused. The statement that accused would interfere with witnesses remains an unsubstantiated allegation.

Before the court considered the application, it called for a pre bail report in respect of the accused person. According to the report filed in court on 27th February 2015, the family of the deceased was not opposed to the accused person being released on bail. The accused has a known home where he resides permanently and is not a flight risk. The accused' s family pleaded with the court to consider him for bond and to make the terms reasonable so that they can seek help from well wishers to stand surety for him due to the fact that their piece of land has no documents.

Having considered all the above and the findings in the pre bail report, I am satisfied that there are no compelling reasons not to grant the accused person bail/bond. The accused person may be released on bond as follows;

1. Cash bail of Kshs 50,000/-;
2. One Surety of Kshs 200,000/-;
3. The accused person is warned against interfering with prosecution witnesses.

4. Accused should be of good conduct during the pendency of this case.

5. Accused should attend court as will be required of him.

In default of any of the above conditions bond will be cancelled.

DATED AT MERU THIS 24th DAY OF APRIL 2015.

R. P. V. WENDOH

JUDGE.

Mrs Kigira For State

Mwenda Court Assistant

Mr. Nyenyire holding brief for Mr. Kiogora for accused

Accused present