



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 12 OF 2013

LESIT, J.

REPUBLIC.....PROSECUTOR

-VERSUS -

JOSEPH MBITHI MUNYAO.....1ST ACCUSED

SIMON MWANGI KIMANI.....2ND ACCUSED

PETER MBURU NDUNGU.....3RD ACCUSED

RULING

1. The accused persons are facing a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. The accused persons seek bail pending trial in the Notice of Motion application dated 15th April 2015. The grounds for the application are:

1. *That the applicants are facing a charge of murder contrary to Section 203 as read with 204 of the Penal Code.*
2. *That the applicants were arrested on the 24th day of January 2013 and are held at the G. K. Nairobi Remand Prison.*
3. *That the trial is scheduled to start on 22nd and 23rd June 2015 and it is not known when it will come to an end.*
4. *That under the Constitution of Kenya the applicants are presumed innocent until the contrary is proved and hence entitled to be released on bail.*
5. *That the circumstances of the case and the facts that have emerged from the prosecution do not disclose any compelling reasons not to release the applicants on bail.*
6. *That the applicants reside within the jurisdiction of this honourable court hence most unlikely to abscond and/or jump bail.*
7. *That the facts as to the occurrence of the offence do not present any danger of interference with witnesses of any nature whatsoever from the applicants if released.*
8. *That the prosecution and all other interested parties will not be prejudiced in any way with the release of the applicants as the applicants have previously given the prosecution all the necessary cooperation.*
9. *That the wheels of justice tilt in favour of granting the prayers sought herein.*

3. The 1st accused in his affidavit in support of the application has deposed that he has a place of abode and family to take care of him if he is released on bond. He deposes further that he has

- relatives ready to provide security for his release. He deposes further that he has a fiancé and daughter in Kenya. For these reasons the 1st accused deposes that he is not a flight risk.
4. The 2nd accused in his supporting affidavit has deposed that he has a relative willing to host him upon release and another ready to provide security for the bond if his application was granted. He deposes further that he has a wife and child and that he is not a flight risk.
 5. 3rd accused also filed an application for bail dated 21st March, 2014. There are three grounds in support of the application which in brief are that the accused was arraigned in court in 2013; that the hearing and disposal of the case has dragged on for too long; and that the offence is bailable and the accused would abide by any terms the court may set.
 6. The 3rd accused has sworn an affidavit in support of his application in which he deposes that he is a Kenyan citizen, law abiding and capable of living peacefully with others. He deposes that he is willing to abide by any bond terms set by the court.
 7. Mr. Ongaro for the 1st and 2nd accused reiterated the depositions by the two accused as per their affidavits. He urged the court to find that the two accused had relatives willing to stand surety for them and also host them and that they were not a flight risk.
 8. Mrs. Omungala for the 3rd accused also reiterated the disposition by the 3rd accused and urged that the accused is the sole bread winner of his family, that he cannot abscond and that he will abide by bond terms set by the court.
 9. The State was represented by Ms Onunga. Learned Prosecution Counsel opposed bail for all three accused persons. Counsel urged that there were still some suspects at large, that the accused were likely to abscond and that the likelihood of the witnesses being intimidated upon release. Learned Prosecution Counsel urged that if the court was inclined to grant bail, it should consider taking the evidence of the mother and grandmother of the deceased.
 10. Mrs. Omungala in reply stated that the two witnesses referred to by the State were PW1 and 2 in the case. Counsel also urged that accused were arrested in 2013 and there was no way the police could harbour intentions of arresting any other suspects in the case.
 11. I have carefully considered the applications by the three accused persons in this case, together with their affidavits in support. I have also considered the submissions by all counsels.
 12. The accused had made similar applications for bail in the past which were declined. In my earlier ruling on an application for bail by the 1st and 2nd accused made on the 20th November, 2014 I declined bail on two grounds. The first ground was on the basis of the earlier ruling of R. Lagat, J. dated 17th July, 2013 in which she ruled that releasing the accused persons on bail would instill extreme fear in the minds of the local residents and the likely prosecution witnesses due to the peculiar circumstances of this case that it is not appropriate at this point in time to release the applicants on bail. The second reason I gave was the fact that the circumstances of the case had not changed and no new grounds had been advanced.
 13. That position has not changed and there are no new grounds advanced to change the position. In addition to the above, the case has a hearing date very soon. The prosecution case is likely to be finalized at the next hearing.
 14. Having considered the applications for bail for each of the accused persons in this case, I find that it has no merit and is dismissed

DATED AT NAIROBI THIS 28TH DAY OF MAY, 2015.

LESIIT, J

JUDGE