



REPUBLIC OF KENYA

IN THE HIGH COURT OF MERU

HCCR NO. 21 OF 2014

REPUBLIC.....PROSECUTOR

VRS

JULIUS MARI NTONGAI 1ST ACCUSED

LUKA MWITHALIE MUROKI 2ND ACCUSED

RULING

These are applications for bond dated 2/3/2015. The two accused Julius Mari and Luka Mwithalie are charged with the offence of murder contrary to Section 203 and 204 of the Penal Code. They are alleged to have murdered their immediate neighbor. The applications are predicated on grounds found on the face of the applications and the affidavits of the applicants.

The grounds are that the Accused persons have unqualified right to bail on reasonable terms; that they will attend court as will be required of them; that they are still presumed innocent till proved guilty and if released, they will abide by all the terms that the court may impose.

The application was opposed. A replying affidavit was sworn by PC Moses Kusimba the investigating officer in which he deponed that the Accused persons are likely to interfere with witnesses who hail from same home area; that accused persons lives may be in danger because of revenge attacks and that there is high likelihood of them absconding if released.

For the court to grant an accused persons bail, it must be satisfied inter alia;

1. ***That the accused will turn up for the trial;***
2. ***That the accused will not interfere with witnesses;***
3. ***The court will consider accused's character and antecedents;***
4. That the accused's life will not be in danger;
5. ***The severity of the likely sentence.***

Bond will not be granted if there are compelling reasons to deny it. This court called for a bail enquiry reports (pre-bail) which were prepared. The bail reports made negative findings about the Accused persons past character, whereby they are portrayed as common criminals. They have been in and out of jail and both the local administration and community are not ready to have them back in their society.

Having considered the pre-bail reports and the affidavits filed herein, I find that indeed the deceased was a neighbour of the Accused persons and since the community is not ready to accept the Accused persons; there is high likelihood of revenge attacks on Accused persons. In addition, if released the witnesses who are neighbours are likely to be intimidated by Accuseds' presence and may not be ready to testify. It would put pressure on the witnesses.

The court cannot ignore the character and antecedents of the accused persons because they may be an intimidation to the witnesses.

For all these reasons, I am satisfied that there are compelling reasons to deny the accused persons bond. I decline to grant the application to grant bond. The accused persons will remain in remand pending the hearing of this case.

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF MAY 2015

R.V.P. WENDOH

JUDGE

In the presence of:

Mr. Mulochi For State

Mr. Mutuma holding brief for Mr. Kiogora for Accused

C/c - Faith

Both Accused