

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CR CASE NO. 2 OF 2015

REPUBLIC.....PROSECUTOR

-VRS-

JAMES MUTHEE M'MWIKARIA.....ACCUSED

RULING

The accused faces a charge of murder contrary to Section 203 as read with Section 204 of the PC. By the motion dated 24/3/2015, he seeks to be released on bond pending the hearing of this case. He filed a supporting affidavit and a further affidavit dated 8/5/2015 in which he deponed that he is presumed innocent until proved guilty; that he is a family man and is not a flight risk but will attend court as will be required of him. Further, affidavits were filed by Dorcas Muthoni, Margaret Nkirote and Emmah Kinya.

The application was opposed and the Investigating Officer, PC James Aswani swore an affidavit to the effect that accused is a flight risk having fled from the scene of crime from 25/5/2014 till he was arrested on 5/1/2015 in Tigania West; that the offence is still fresh and he is likely to be subject of revenge attacks from the community.

Bond is a Constitutional right but the said right is not absolute; the court is left with discretion to consider whether or not there are compelling reasons to deny the accused bond. In an application for bond, the court considers whether the accused will turn up for his trial, which is the primary consideration; whether the accused will interfere with witnesses; the character and antecedents of the accused; whether accused's life is secure; the nature of the offence and the severity of the sentence to be meted in the event of conviction.

I have considered the affidavits filed herein. Firstly, I must agree with the prosecution that by the accused asking the prosecution witnesses to swear affidavits in support of his application, he has already started interfering with the prosecution witnesses. Even if they are his relatives, he should not have asked them to swear affidavits in an attempt to support his case, which this court is not yet considering at this stage.

Further to the above, the Investigating Officer deponed that the accused fled after the commission of the offence on 25/11/2014 till his arrest on 5/1/2015. That allegation has not been rebutted. There is no guarantee that he will turn up for his trial if released.

I have considered the pre-bail report, and though bond is not seriously opposed but taking into account the fact that the accused has already sought the prosecution witnesses speak on his behalf, and the fact that he fled after commission of the offence, I find that there are compelling reasons that warrant the denial of bond. For the above reasons, I decline to grant accused bond. He will remain in remand pending hearing of his case.

DATED, SIGNED AND DELIVERED THIS 21ST DAY OF JULY, 2015

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Musyoka for State

Mr. Omari Holding Brief for Mbaabu C.P. for accused

Faith/Faith, Court Assistants

Accused, Present