



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 103 OF 2013

REPUBLIC.....PROSECUTOR

VRS

MOSES MAINA GICHUKI..... 1ST ACCUSED

SAMUEL MURIUKI BARIU..... 2ND ACCUSED

RULING

The accused persons, Moses Maina Gichuki and Samuel Muriuki Bariu are charged with the offence of murder contrary to Section 203 as read with Section 204 of the PC.

They have filed two applications seeking to be released on bond/bail respectively and have sworn affidavits in support thereof. They depose inter alia that they have been advised by their advocate on record that they have unqualified constitutional right to be released on bond or bail on reasonable conditions and that they are not aware of any compelling reasons within the meaning of Article 49 (1) (h) of the Constitution of Kenya 2010, as to why they should not be released on bail/bond. They further adhered to attend all mentions and trial sessions without fail and as directed if released on bond or bail.

The applications were opposed by Mr. Musyoka, Counsel for the State who sought to rely on the affidavit sworn by Corporal Joshua Molla, the investigations officer in this case. He deposed inter alia that all the key prosecution witnesses are well known to the accused persons since they reside in the same locality and if released on bail, the accused persons are likely to threaten/interfere with prosecution witnesses and that the accused persons murdered the deceased in the most cruel manner; that their release on bail will most certainly impact negatively on the family of the deceased. He further contended that though the offence of murder is now bailable, the grant of bail is not absolute but is a matter for the discretion of the court.

Before granting bond to an accused, the primary consideration is whether accused will attend the court for his trial. Other considerations include the security of the accused if released; whether he will interfere with witnesses; his antecedents and character etc.

Before the court considered these applications, it called for pre-bail reports. With respect to the 1st accused, it was stated that the 1st accused had no permanent place of residence and his wife had deserted him. It was further stated that prior to his arrest, the 1st accused had moved from Laikipia to Timau area where he was moving from one area to another packing carrots or potatoes on commission basis. The 1st accused's own father intimated to the probation officer that the 1st accused was of dubious character and

that he once served a jail term in Nyahururu for an undisclosed offence and that his family only hears that he lives in Timau but they were not sure of what he does. There was a general feeling in the area that the 1st accused should not be given bail since he had no given place of abode and could therefore easily abscond. His own father was not willing to bail him out since he considered him a flight risk.

With regard to the 2nd accused, the report discloses that he is a school dropout at standard two though he had lied to the probation officer that he went upto standard 8. His father was willing to have him released on bail/bond but the general community and the chief were against the 2nd accused being released on bond/bail due the sensitivity of the case at the moment. With respect to both accused persons, no mention was made of the victim's family.

The accused persons have indeed a Constitutional right to bail but that right is not absolute. If there are compelling reasons, the court will deny them bond.

I have carefully considered these applications, the replying affidavit and the pre-bail reports in respect of the accused persons.

With respect to the 1st accused, he is said to be a flight risk since he had no fixed abode and he is of questionable character. His own father was not willing to bail him out since he considered him a flight risk. Similarly, with regard to the 2nd accused, the probation officers report was not in his favour since it was stated that the local community is not ready to have him back in the society and his security cannot be guaranteed. Taking into the totality of the circumstances in this case, I find that there are compelling reasons as to why the accused persons should not be released on bond/bail.

The applications for bond are declined. The accused persons will remain in remand pending the hearing of this case.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF SEPTEMBER, 2015.

R.P.V. WENDOH

JUDGE

PRESENT

Mr. Musyoka for State

Mr. Kimathi Holding Brief for Kiogora Mugambi for Accused

Faith/Ibrahim, Court Assistants

Present, both Accused