



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 63 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

BENJAMIN KITHINJI 1ST ACCUSED

BENAR5D MUTURA 2ND ACCUSED

COSMAS KIRIMI 3RD ACCUSED

RULING

Benjamin Kithinji, Benard Mutura and Cosmas Kirimi are jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. They filed an application dated 8/11/2015, seeking to be released on bond pending the hearing of this case. The applications are supported by their affidavits in which they deponed that this case is likely to take long to be heard and that they are willing to abide by all the conditions that the court may impose.

The application was opposed and a replying affidavit was sworn by IP Charles Charo the Investigation Officer, who deponed that the murder was committed recently and there is a lot of animosity on the ground; that the accuseds' lives will be in danger if released; that the accused persons have no fixed abode and are a flight risk if released on bond.

The court called for pre-bail reports which I have considered along with the affidavits sworn herein. In such an application, the primary consideration is whether an accused will turn up for his trial. Other considerations are whether the accused will interfere with witnesses; whether their security will be guaranteed and the court also considers their antecedents.

As regards the first appellant, the pre-bail report indicates that the community is not to receive him back because he is a habitual offender; that he has even served jail terms and that he commits offences and disappears from the area and that his life will be in danger if released on bond, and that he is a flight risk.

As respects accused 2, he is said to be a close associate of accused 1, involved in criminality; that the community are likely to carry out revenge attacks on him if released on bond and that he is a flight risk.

Just like the other two, the report on accused 3 was negative; that the community is not ready to have him

released on bond because of his perceived involvement in hiring criminals in his *mira* business and that he is likely to be harmed if released; that his home has already been burnt.

Considering the above reports, it is my considered view that even though there is no evidence of likely interference with witnesses, the accused's presence in their community where the witnesses hail from, the witnesses are likely to feel intimidated or threatened due to accuseds' presence and therefore have a negative bearing on the case. I find that there are compellable reasons that warrant the accused persons being denied bond. I therefore decline to grant accused persons bond. They will remain in remand pending the hearing of this case.

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF DECEMBER, 2015.

R.P.V. WENDOH

JUDGE

15/12/2015

In the Presence of:

Mr. Mulochi for State

Mrs. Ntarangwi for Accused

Accused, All Present

Ibrahim/Peninah, Court Assistants