

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 64 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

PHILIP KAVILI MUTHENGI alias MWITI..... 1ST ACCUSED

MERCY KIANJIA KINYUA 2ND ACCUSED

LYDIA KAIMENYI KINYUA 3RD ACCUSED

RULING

The three accused, namely; **Philip Kavili Muthengi alias Mwiti, Mercy Kianjia Kinyua** and **Lydia Kaimeyi Kinyua** are jointly charged with the offence of murder contrary to **Section 201** as read with **Section 204 of the PC**. By the application dated 9/10/2015, they seek to be released on bond pending the hearing and determination of this case. All the three filed affidavits in support of the application. The grounds upon which they bring this application are that they have a constitutional right and be released on bond pending hearing of their case; that they are presumed innocent till proved otherwise; that they are willing to attend court as will be required of them; they have fixed places of abode being Kenyan citizens and are not a flight risk.

The application was opposed and CPL Evelyn Akoth filed an affidavit in reply in which she deponed that the accused are likely to interfere with witnesses who hail from the same locality as accused; that the offence occurred recently and the local community is likely to carry out revenge attacks on the accused.

I have considered the affidavits in support of the application and the reply in opposition. Though bond is a Constitutional right of an accused, the same is not absolute. Bond will be declined if there are compelling reasons to deny bond.

In this case, the court called for a pre bail report which it has also considered. The primary consideration in an application for bond is whether the accused will turn up for the trial of his/her case. Having read the pre-bail report, I find that the accused are said to have fixed abode; there is no obvious likely animosity from the community; and the prosecution did not avail any evidence to the effect that the accused are likely to interfere with the witnesses. For the above reasons, I find that the prosecution has not demonstrated that there are any compelling reasons to warrant this court to deny the accused persons bond. I therefore grant the application and order that each accused may be released on bond as follows:

1. Each accused may be released on cash bail of KShs.50,000/= plus one surety of Kshs.300,000/= each;
2. If released, accused to ensure they attend court as will be required of them;
3. They should be of good conduct and in default of any of the above, bond will be cancelled.

DATED, SIGNED, AND DELIVERED THIS 8TH DAY OF DECEMBER, 2015.

R.P.V.WENDOH

JUDGE