



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 25 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH KIRIMI.....1ST ACCUSED

ZACHARY KARUNGU.....2ND ACCUSED

NICHOLAS KIBAARA.....3RD ACCUSED

DAVID KIMATHI UHURU.....4TH ACCUSED.

RULING

1. The 5th Accused is charged with murder contrary to section 203 of the Penal Code, alongside four others. The other four co accused were granted bail on 17th October 2012. That was one year two months before the arrest of the 5th accused.
2. Mr. M. Mwenda urged court to grant the 5th accused bond preferably on same terms as his co accused as there was no reason to deny him bail.
3. Mr. Mungai has urged court to deny the 5th accused bail citing his delayed arrest and enjoyment in this case was as a result of having gone underground.
4. I have considered this application and oral submissions by both counsels to the case.
5. There is no affidavit by the State in response to the application for bail for the 5th accused. The prosecution counsel's submission that the 5th accused went into hiding after the offence is a mere statement from the bar. It ought to have been under oath in order to give the 5th accused notice so as to respond if necessary. In absence of any such averment under oath, that statement remains a mere allegation.
6. It could have been a material consideration had the state put it on oath. This is because likelihood accused may not show up for his trial is a good and compelling ground to deny the accused bail.
7. I see no compelling reason to deny accused bail. I will grant him similar terms as his co accused which is.
 - a. Accused may be released on a cash bail of Ksh.250,000/-.

- b. Alternatively accused may be released on a bond of Ksh.250,000/- with two sureties of similar amount.

Those are my orders.

DATED SIGNED AND DELIVERED THIS 27TH DAY OF MARCH, 2014

LESIIT J.

JUDGE.