



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 55 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

MOSES MBAABU.....1ST ACCUSED

BERNARD MUNJURI.....2ND ACCUSED

DAVID MITHIKA.....3RD ACCUSED.

RULING

1. Mr. Omari for the accused urged that the accused persons should be granted bail as it was their constitutional right under Article 49(1) (h) counsel urged that the accused had promised to abide by the bond terms.
2. Mr. Moses Mungai learned counsel for the state urged that even though it was the accused Constitutional right to be released on bail pending trial, that right was not absolute. Counsel for the state urged that the State was opposing bail because one of the suspects was still at large and secondly because the accused persons were close neighbour of the family of the deceased. Mr. Mungai urged that the situation on the ground was hostile and not conducive to accused release on bond.
3. The court called for Pre-Bail Probation reports following the submissions by both counsels for the accused and State. The Pre-Bail Reports were filed on 18th March 2014. They were unfavourable to the accused persons declaring that the accused were not suitable for considerations of release on bond. In the reports the basic reason why the Report was unfavourable to the accused was because of a threat on their lives by members of the family of the deceased. The second reason was the local Administration including Area Chief's report that accused persons were of questionable character and were involved in questioned activities.
4. The defence was given a chance to comment on the Pre-Bail Reports having noted they were unfavourable to the accused persons. Mr. Omari for all accused stated that he had no comment.
5. I have considered the accused persons application for bail.
6. In **Ng'ang'a vs Republic 1985 KLR 451** Hon. Chesoni J, as he then was held, commenting on principles to be considered in applications for bond:

“1.The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors

- a. **In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:**
- i. **The accused will fail to turn up at his trial or to surrender to custody;**
 - ii. **The accused may commit further offences; or**
 - iii. **He will obstruct the course of justice.**
- b. **The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;**
- i. **The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
 - ii. **The strength of the prosecution case;**
 - iii. **The character and antecedents of the accused;**
 - iv. **The likelihood of the accused interfering with prosecution witnesses.**

Where more than one person are jointly charged with a criminal offence, the case of each accused person must be examined on its own facts and this applies also to an application for bail in which each accused person's application is to be considered on its own facts, circumstances and merit.”

7. The Constitution of Kenya 2010 widened the category of accused persons eligible for bail by opening up grant of bail/bond pending trial to persons charged with any offence however, punishable. Article 49(1) (h) is clear that bond should be denied where there exists compelling reasons not to grant bail.
8. In this case we have a Pre-Bail Report showing accused are involved in questioned activities of Criminal character. Any likelihood of an accused person to re-offending or committing another or other offences once released on bail is strong compelling reason not to grant accused bail.
9. The family of the accused persons have not recommended accused release on bond and made it clear they would not avail themselves to stand surety for them. That too is a strong indication to deny accused bail. If their own family members are uncomfortable with accused release on bail, it is an indication to decline to grant the bail sought.
10. The report from the local Administration area accused come from was negative to the accused release on bail. Taking the Local Administration Report in conjunction with both the deceased and accused family members negative response to bail together with the Probation recommendations, I find that there are compelling reasons why the accused should be denied bail. Accordingly I decline to grant accused bail and order that they should remain in custody pending the hearing and determination of the case against them or other orders of this court.

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

J. LESIIT

JUDGE.