



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 72 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS NJERU MAKEMBU.....ACCUSED

RULING

1. The accused faces one count of murder contrary to section 203 as read with section 204 of the Penal Code. he was arraigned in court on 15th August 2013. He now seeks bail pending his trial under Article 49(i) (h) of the Constitution.
2. Mr. Murithi, counsel for the accused urged the Notice of Motion dated 12th February 2014 in which the stated grounds for the application are.
3. In his supporting affidavit the accused avers he will abide by the bond terms and show up for his trial. He also avers that his family was willing to stand surety for him.
4. Mr. Murithi in his submissions relied on the grounds as the face of the application and the supporting affidavit sworn by the accused.
5. Mr. Mungai for the state opposed the application counsel urged that the deceased in the case was a sister in law of the accused and the eye witness the mother, sister and wife of the accused.
6. I have considered the application for bail. To put the facts correctly, the deceased was the blood sister of the accused. The key witnesses as per witness statements were the wife of the accused and mother of the accused.
7. Under Article 49(1)(h) of the Constitution every person facing a charge in court is eligible for bond irrespective of the charge. The only condition being if there are no compelling reasons not to grant bail.
8. In the case of In Ng'ang'a vs Republic 1985 KLR 451 where Hon. Chesoni J, as he then was held:

“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 of 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;

The likelihood of the accused interfering with prosecution witnesses.”

9. The accused was arraigned in court six months ago with the murder of his sister. The circumstances of the attack are that the deceased was shielding her mother from the accused when the accused turned against her and stabbed her several times. Before the deceased intervened, the appellant had tried to strangle his own mother with bare hands before going into his house to arm himself with a knife and sword.

10. I find incident was too recent and the family members must still be agonizing the death of their kin. It is no comfort that it was similarly a kin who led to the kin. The mother of accused and deceased must particularly be affected. Releasing the accused so soon after the incident is likely to create great anxiety in the old lady.

11. I find that there are compelling reasons not to grant accused bail. I therefore decline the application and dismiss it accordingly.

DATED SIGNED AND DELIVERED THIS 20TH DAY OF MARCH, 2014

J. LESIIT

JUDGE.