



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 62 OF 2006

REPUBLICPROSECUTOR

VERSUS

PETER MUGAMBI PATRICKACCUSED

RULING

1. The accused in this case is facing one count of murder contrary to section 203 of the Penal Code. The deceased in this case from the witness statements is the mother of the accused.
 - a. **That the accused person's right to be released on bail/bond pending trial is enshrined in the Constitution.**
 - b. **That the accused person will strictly abide to all the conditions that the court may deem necessary to impose for his release.**
 - c. **That the accused person will all times avail himself in court or any other designated place as will be required by the court.**
 - d. **That the accused person's relatives are ready and willing to stand surety for his release on bail and/or bonds.**
2. The application for bail was made by Mr. Muriithi, counsel for the accused. Counsel relied on the grounds on the face of the application which I have considered
3. The application was supported by an affidavit sworn by the accused. The gist of that affidavit was accused commitment to abide by the conditions set for bond and to show up for his trial. The accused also averred that his relatives were ready and willing to stand surety for him. Mr. Muriithi in his submissions relied on the averments in the affidavit and urged the court to grant the accused bail.
4. The State opposed the application. Mr. Mungai, learned State Counsel urged the court to note the relationship between the accused, deceased and the key witnesses. Counsel urged that they were close relatives and that the accused was in a position to intimidate the witnesses if released.
5. I have carefully considered this application, submissions by counsels and the legal provisions relevant to this case. Article 49 (1) (h) of the Constitution widened the application of bond to previously

what were capital offences which were regarded as illegible for bond consideration. Currently any accused person irrespective of the offence they face can be granted 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. Under the new dispensation these principles are still relevant. The only additional point is that the court must satisfy itself that there are no compelling reasons why bond or bail should be denied before granting the same.

8. I have taken all these issues and factors into consideration. The accused is accused of causing his mother’s death. The circumstances of the offence are that the accused was demanding for food when his mother stood to calm him down. He is said to have hit his mother and as a result she suffered severe injuries from which she did not recover.

9. I have considered that the incident took place hardly a year ago. There are two grounds that in my considered view militate against considering bail for the accused. First, is the close relationship between the victim, the accused and the key witnesses. It is my view that sufficient time should be allowed to lie in order to give the close relatives affected by this incident time to heal. Second, given the circumstances of the offence it would create intimidation to witnesses to release the accused especially so soon after the incident. It would give a wrong impression. Noting the victim and witnesses are women, it could be a mistake to release the accused at this moment. For these reasons, I decline to grant the accused bail. He should remain in custody until his case is heard or until other orders of the court.

DATED AND DELIVERED AT MERU THIS 20TH DAY OF MARCH, 2014

LESIIT, J.

JUDGE