



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE No. 63OF 2011

REPUBLICPROSECUTOR

VERSUS

JOHNSON KIRIMA GITUMAACCUSED

RULING

1. The accused through his counsel, Mrs.Ntarangwi has applied for bail pending trial under Article 49 of the Constitution and section 124 of the Criminal Procedure Code. The grounds for the application are two namely
 - (a) That the applicant was arrested on 28th November, 2011 or thereabout and he has been in custody for almost 2 years and 2 months and the hearing of this matter has never commenced due to many other murder cases pending for hearing before the High Court and the matter is likely to take a considerable period of time before its finalization.
 - (b) That the applicant is ready and willing to abide by all the terms and conditions that may be imposed by the court and will attend court when required to do so if the will be granted bail/bond
2. The application is supported by an affidavit sworn by the accused. In brief the accused avers that since his arrest 2 years and months ago the children have remained without support. He urged that the trial is likely to take long due to number of pending cases and number of witnesses likely to testify in this case.
3. The state has through prosecution counsel Mr. Moses Mungai opposed the accused release on bond. Briefly learned counsel urges that the state has a very good case which will result in conviction. He further avers since prosecution witnesses come from same locality with accused the accused release on bail is likely to inflict fear on the witnesses. He avers that the children of the accused and deceased (both were husband and wife respectively) are yet to come to terms with the incident and were still traumatized.
4. I have considered this application and the submissions by counsel. 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 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 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."

5. In this case the accused person is related to the deceased by virtue of being the estranged husband. The key witness according to the witness statement is a sister in law of the accused. Mr. Mungai has submitted that the children of the deceased and the accused are still traumatized as a result of this incident. This has not been denied. The only thing the counsel for the accused said was that the children are suffering because of the accused incarceration for the reason that they have been left without support.

6. Having weighed the facts and the circumstances of the case it is my view that there are compelling reasons to deny the accused person bond. Due to the close relationship between him and the deceased and between him and the key witness, given the circumstances of the case it will create unnecessary anxiety to all the parties involved if the accused is granted bail. Accordingly I decline to grant the accused bail and will instead give him a hearing date.

DATED AND DELIVERED AT MERU THIS 19TH DAY OF MARCH, 2014

LESIIT, J.

JUDGE