



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 41 OF 2012

LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

MOSES KINYUAACCUSED

RULING

1. The Accused faces one count of murder contrary to section 203 of the Penal Code. It is alleged that on 6th May 2012 the accused murdered one Benson Koome.
2. The accused has by a Notice of Motion filed by Basilio Gitonga Murithi and Associates, Advocates for the accused, sought to be admitted to bail/bond pending trial. The Application is dated 11th December, 2013 and is brought under Article 49(1) of the Constitution.
3. There are five grounds for the application as follows:
 1. **That the accused person's right to be released on bail/bond pending trial is enshrined in the Constitution.**
 2. **That the accused person is quite advanced in age as he is 66 years old or thereabout**
 3. **That the accused person will strictly abide to all the conditions that the court may deem necessary to impose for his release.**
 4. **That the accused person will all times avail himself in court or any other designated place as will be required by the court.**
 5. **That the accused person's relatives are ready and willing to stand surety for his release or bail and/or bond.**
4. The state has filed a replying affidavit, sworn by Moses Mungai, Prosecution Counsel. The Affidavit opposes bail on grounds the State has a very good case; the witnesses reside in same locality as the accused and so the likelihood of interference or intimidation of witnesses cannot be ruled out; the key witnesses are immediate family members of the accused; and that there is still hostility on the ground.

5. A Pre Bail Report from the probation department was called for and has been filed. In that Report, Bail for the accused has not been recommended. The reasons given for the same are that the fact that the accused has been very violent towards his immediate family to the extent of destroying homes and leaving them without places of abode. The other reason given is that both his immediate family and community are opposed to his release as they see him as a threat to them. The Probation Officer felt that there could be danger of a revenge attack against the accused.
6. The accused filed a further affidavit dated 25th March 2014. In it he rubbishes the affidavit sworn by the Litigation Counsel and the Pre-Bail Report by the Probation Officer of being full of false statements, false allegations and misleading information.
7. I have considered the application by the accused, the submissions by counsels and affidavits and reports filed in regard to this application. The principle considerations in an application for bail were set out by Chesoni J. as he then was in the case of 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.**
8. The accused is entitled to bond pending trial under Article 49(I) (h) of the Constitution. That is so subject to their being no compelling reason to decline the application. The accused is a 66 year old man. He is alleged to have murdered his first son. The eye witnesses are accused younger sons.
9. The Pre-Bail Report given the situation on the ground, it portrays a traumatized family of the accused and a disheartened community due to previous violent acts perpetrated by the accused against his immediate family members. The accused made a general denial of the Pre-Bail Report. However, he did not address the claims of previous acts of violence and threat to security by him in the community.
10. Having considered the entire matter I am persuaded that releasing the accused on bail or bond pending his trial will not be to the public interest and public security both of his immediate family members, the community and the accused himself. It will be safe to let the accused remain in custody during the pendency of his trial.

11.This case has a hearing date for 6th and 7th October, 2014. The case has seven witnesses. They had come for hearing on 9th October. Unfortunately the court was not sitting. This case is likely to be completed this year. That wait will not be inordinately long.

12.For reasons given I decline to grant the accused Bail or Bond. He will remain in custody during the pendency of his case.

DATED SIGNED AND DELIVERED AT MERU THIS 9th DAY OF APRIL 2014.

J. LESIIT

JUDGE