



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO.78 OF 2013
LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

AYUB MICHUBU.....1ST ACCUSED

STEPHEN MUCHOKI.....2ND ACCUSED

RULING

1. The Accused persons **AYUB MICHUBU, STEPHEN MUCHOKI**, the 1st and 2nd accused respectively are facing one count of murder contrary to section 203 of the Penal Code. They are alleged to have murdered Lucy Kendi on 26th August 2013 at Kathiranga Location.

2. Mr. Nelima, counsel for both accused has applied for their release on bail pending trial in an application dated 9th December, 2013. The application is brought under Article (1) (h) of the Constitution and cites 3 grounds namely.

1. That the accused persons are entitled to bail under the Constitution.

2. The accused persons will attend court as and when required.

3. That in the premises we pray for the orders sought.

4. The application is opposed. Mr. Moses Mungai, Prosecution Counsel has filed a Replying Affidavit dated 12th March 2014 in which he opposes bail. Some of the reasons given are accused origin is unknown and that prosecution has a strong case and probability of accused absconding is high.

5. The court called for Pre-Bail Probation Reports which were filed in court on 10th March, 2014. The Reports are comprehensive enough and give expressions made by the families of each accused and also of the deceased. It is non-committal on recommendations on the question of bond.

6. I have considered the application and submissions by counsel, together with the affidavits filed by both sides and the Pre-Bail Reports.

The principles which should be applied when considering an application for bail are set out in various cases I will quote Hon. Chesoni J, as he then was, in **Ng'ang'a vs. Republic 1985 KLR 451** 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. I have considered the application and I have come to the conclusion that no compelling reasons have been adduced that would warrant bond being declined. The accused home is known and can be easily found especially through sureties which will be one of the conditions for bail. There is no evidence the accused persons may reoffend or are likely to abscond. There is no real risk demonstrated of interference with witness on the investigations.

8. I have come to the conclusion that accused should be granted bond. I will allow their application and grant both accused persons bond on the following terms:

i. Each accused will sign a bond of Ksh250, 000/- and in addition provide one surety each of the like sum.

ii. Each accused will be required to report monthly to the investigating officer of this case or the OCS of the station and a report should be filed in court by the police station concerned at the commencement of the trial.

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

J. LESIIT

JUDGE