



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 58 OF 2010

LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

CYPRIAN KUNGA M'KWARIA.....ACCUSED

RULING

1. The Accused person **CYPRIAN KUNGA M'KWARIA** is charged with one count of murder contrary to section 203 of the Penal Code. The accused is alleged to have committed the offence on 25th and 26th May 2010 at Gitie Sub-Location against Rebecca Kaigongi.
2. There was no formal application for bail/bond filed. However, Mr. Murithi for the accused made an oral application. In his submissions Mr. Murithi urged that the accused has been in custody since 2010. Counsel for accused urged that the accused was ready to abide by bail terms and that he had counseled him to understand the seriousness of the offence and meaning of bail.
3. Mr. Moses Mungai the Prosecution Counsel filed a replying affidavit dated 24th March, 2014. That affidavit opposes bail or bond being granted to the accused for several reasons. One that witnesses reside in same place as accused. Two that the deceased was wife of the accused and that after committing the offence the accused ran away. Three that accused interfered with witnesses therefore caused investigations to take long to complete. Fourth that detention of accused was necessary in order to maintain confidence in the administration of justice.
4. There is a Pre-Bail Report by the Probation, Mr. Wambu. In that report it is clear that the deceased aged mother has never come to terms with the violent death of her daughter and as a result she is yet to heal from the loss. The community where accused and deceased come from are receptive to accused bond. The Report does not recommend accused release.
5. The Principle consideration for bail were disclosed 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."

6. The accused seeks bail. I see from Prosecution counsel's affidavit that he delves into the arena of facts which are not within his knowledge and the sources of the information are not given. That affidavit is not for that reason helpful.

7. The deceased in this case was a wife of the accused. From the record the accused was arraigned in court four months after the incident took place. The statement of the Investigating Officer shows that the accused escaped after the incident.

8. One of the grounds to deny bail is likelihood of the accused to jump bail. The likelihood of the accused failing to turn up at his trial or to honour the bond terms cannot be ruled out given the background that he went into hiding for four months after this appeal.

9. I find compelling reasons not to grant bail to the accused. The Application for bail pending trial is dismissed. The accused will remain in custody during the pendency of his case.

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

LESITJ.

JUDGE