



REPUBLIC OF KENYA

High Court at Meru

Criminal Case 18 of 2012

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY KIMATHI MUKEMBU.....ACCUSED

RULING

The Accused person **GEOFFREY KIMATHI MUKEMBU** is charged with murder contrary to section 203 as read with section 204 of the Penal Code. He through Mr. Otieno advocate applied for bail pending his trial. Mr. Otieno relied on Article 49(1)(h) of the Constitution. Counsel urged that the accused person has a fixed place of abode and his home is at Kamachathi Village in Tharaka Nithi County. He said that the accused has a line of defendants as he has a wife and children. Mr. Otieno urged that the accused had assured him that he would religiously attend court. Mr. Otieno urged the court to give reasonable bond terms because the accused was a peasant farmer.

Mr. Moses Mungai learned state counsel opposed bail. He submitted that the accused person went underground for one week after committing the offence. He said that since the witnesses were immediate neighbours to the accused there was a likelihood of interference. He also urged that the offence was still fresh in the minds of the witnesses and it will not be appropriate to grant bail at this point.

There is a Pre-Bail Report by the Probation which I have considered. From that report the accused person appears to have a good reputation and none of the people interviewed, including the wife of the deceased raised any objections to the accused being released on bond.

The principles that should guide a trial court when considering whether or not to grant bail to an accused person, and also when considering the terms of the bond it will grant, if in the exercise of its discretion it decides in favour of the accused persons are settled. These principles are well settled by precedent in the case of **Ng'ang'a vs Republic 1985 KLR 451** where Hon. Chesoni J, as he then was 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.”

I am persuaded by the above authority. I have considered the submissions by both counsels and the report by the Probation Officer. I find no evidence before the court to show that the accused poses any threat either to the family of the deceased or the community where he comes from. There is no allegation that he may abscond or he may interfere with witnesses. According to the Probation Officers Report none of all those who were interviewed raised any objection to the accused being released on bail. In the circumstances I find no compelling reason why the accused person should be denied bail. Accordingly I allow this persons application and grant bail in the following terms.

1. Accused should deposit Ksh.20,000/-

2. The Accused should provide one surety in the sum of Ksh. 100,000/-

3. The deputy registrar of this court will examine proposed sureties for their suitability

DATED SIGNED AND DELIVERED THIS 23rd DAY OF MAY 2013

**LESIT, J.
JUDGE.**