



**REPUBLIC OF KENYA**

**High Court at Meru**

**Criminal Case 9 of 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LUCA GIKUNDA ZACHARY.....1<sup>ST</sup> ACCUSED**

**AMOS BUNDI MUGAMBI.....2<sup>ND</sup> ACCUSED**

**STEPHEN KIMATHI MUGAMBI..... 3<sup>RD</sup> ACCUSED**

**R U L I N G**

The Accused persons Luca Gikunda Zachary (1<sup>st</sup>accused), Amos BundiMugambi (2<sup>nd</sup> accused) and Stephen KImathiMugambi(3<sup>rd</sup> accused) are charged with murder contrary to section 203 as read with section 204 of the Penal Code. They have, through Mr. Igweta advocate applied for bail pending their trial. Mr. Igweta relied on Article 49(1)(h) of the Constitution. Counsel urged that the accused persons:

- 1. Will abide by terms given by the Court.**
- 2. Will not abscond because they were Kenyan citizens, have wives who are also Kenyan citizens and all come from Kamwiri Sub Location.**
- 3. The accused have built homes in Kenya and are fathers with children.**

He ruled out any likelihood that the accused will interfere with witnesses and urged that they posed no danger or threat. In respect of the 1<sup>st</sup> Accused, Mr. Igweta submitted that he is facing a charge of Attempted Rape in Nkubu Criminal Case No. 1739 of 2012, for which he has bond.

The State was represented by Mr. Makori, learned State Counsel. Counsel relied on an affidavit sworn by P.C. Venant Mganga dated 8<sup>th</sup> May, 2013. The gist of the affidavit is that the accused persons and the key prosecution witnesses all come from the same locality. That there is a likelihood of intimidation against the witnesses which may instill fear. The Police Officer also deposes that there was also fear the accused if will commit other offences released on bail.

There are Pre-Bail Reports by the Probation Officer Ms Mugambi. The reports give background information of the accused persons. In very brief statements the Probation Officer is non committal

whether or not the accused persons release on bail is recommended. The report on the 1<sup>st</sup> accused however, does confirm that he was out on a bond in a Criminal matter before Nkubu Law Courts, where he is facing a charge of Attempted Rape.

What the court should consider in an application for bail pending trial was discussed in Ng'ang'avs 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.**

**2. 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.”**

I am persuaded by the above authority. I have taken into consideration the submissions made by Mr. Igweta for the 3 accused persons and Mr. Makori for the State together with the pre-bail report by the probation officer. Having done so I have come to the conclusion that the 1<sup>st</sup> accused ought not to be released on bond in this case in view of the fact he is facing a charge which is equally violence related, and even though he is innocent till proved guilty, it is correct to say that since that charge he is now implicated with a more serious offence. PC Mganga's contention in his replying affidavit that there was a likelihood of repeat offences is not far-fetched as far as the 1<sup>st</sup> accused is concerned. I find that the 1<sup>st</sup> accused is not suitable for release on bond or bail. His application is therefore rejected.

In regard to the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons the Pre Bail Report is scanty concerning them. The affidavit by P.C. Mganga was given in general terms and is not specific against the 2<sup>nd</sup> and 3<sup>rd</sup> accused. I do not see any compelling reason why bail should be denied to these accused persons.

Accordingly I grant the 2<sup>nd</sup> and 3<sup>rd</sup> accused bail/bond in the following terms:

**1. Deposit Ksh.30,000/- each.**

**2. Each accused should provide a surety in the sum of Ksh. 500,000/-**

**3. The Sureties will be examined by the Deputy Registrar of this court.**

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF MAY, 2013.**

**LESIT, J  
JUDGE.**