



**REPUBLIC OF KENYA**

**High Court at Meru**

**Criminal Case 7 of 2013**

**REPUBLIC .....PROSECUTOR**

**V E R S U S**

**JACOB MUTHEE M'ITHILANGE.....ACCUSED**

**LESIIT J.**

**R U L I N G**

The Accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence are that on the 9<sup>th</sup> December, 2012 at Naathu Location in Igembe north district within Meru County murdered Morris Maore. The accused has sought bail pending his trial through his counsel Miss Waithaka holding brief for Mr. Nyenyeire. The state was represented by Mr. Moses Mungai. He opposed the application on grounds that there was danger the accused may interfere with witnesses because they come from the same locality he comes from. He sought for time to file a replying affidavit which he subsequently did.

The principles applicable in an application for bail pending trial were considered 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 of 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 have carefully considered this application. In addition to the principles set in the cited case, Article 49(1) (h) of the Constitution gives an additional consideration which is that an accused person has a right to be released on bond/bail pending trial unless there are compelling reasons not to be released. The accused person is aged 45 years. A Pre Bail report was prepared on him by a Probation Officer in Igembe District. In that report it gives details to the following.

**1. Past conduct of the accused person from the local administration and the community.**

According to the report the Area Assistant Chief and the members of the community where the accused comes from allege that the accused person was involved in criminal activities and that this is not the first time he is facing such a charge.

**2. Altitude of the community towards accused release on bail**

The Assistant Chief and the community were opposed to the possibility of the accused being released on bond/bail and they believe that the likelihood of the accused to absconding was a reality.

**3. Altitude of the deceased family**

The relatives of the deceased family strongly opposed bail

**4. Altitude of the accused family**

The family talked positively about the accused being a responsible husband and father however, they showed no positive interest towards enabling his release on bail claiming they had no economic empowerment to meet any bond terms the court may set.

Having considered the replying affidavit by Inspector James Oliech and the Pre-Bail report by Ms Alice Mugambi Probation Officer, I find that the accused should not be released on bail. All the people interviewed regarding the accused have given a bad report concerning him and indicate that the possibility of interference with witnesses cannot be ruled out. The possibility of absconding once released on bond has been demonstrated to be very high. I do find from all these reports that there are substantial grounds for believing that the accused will fail to turn up for his trial and from his past behavior and character, he is likely to obstruct the course of justice through interference with witnesses.

In the result I find no merit in the accused application for bail and the same is dismissed accordingly.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF MAY, 2013**

**LESIIT, J**

**JUDGE.**