



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL CASE NO. 49 OF 2013

REPUBLICPROSECUTOR

VRS

PIUS MWITI MUTHEEACCUSED

R U L I N G

Mr. Mbogo, Advocate for the accused has applied for bail for the accused pending his trial. He submitted that the accused was not a flight risk, and that he was young, with a young family and was an Associate Pastor. Mr. Mbogo urged that the accused had been arrested while grieving his son who died not long ago.

Mr. Makori, learned State Counsel, in his one sentence response said that he was not opposing the application.

I have considered the application. I have also considered the Pre-Bail Report graciously filed on my request by the Probation Department. This Report confirms that the accused is a family man, and that he is a man with a gainful employment and known place of abode. It is shown that he is not a risk to anyone and is unlikely to jump bail.

There is a veiled threat by the husband of the deceased, who is accused paternal uncle that accused security will not be guaranteed if he is released on bail before trial. That threat cannot prevent the court from granting bail as same can be dealt with in accordance to the law.

I have considered principles court must apply in an application for bail as set out 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**

The likelihood of the accused interfering with prosecution witnesses.”

I find all considered that accused should be granted bail.

In conclusion I will grant bail to the accused on the following terms:-

1. Accused to sign and personal bond of KShs.50,000/=
2. Accused to provide one surety in the sum of KShs.200,000/=
3. This matter will be mentioned on 11th November, 2013 with a view of fixing hearing dates. Accused should be present.

DATED AND DELIVERED ON OPEN COURT ON 15TH JULY 2013

J. LESIIT

JUDGE