

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 16 OF 2013

REPUBLIC.....PROSECUTOR

VS

DARIOUS MWITI KABURU.....ACCUSED

R U L I N G

1. I have considered the oral application made by Mr. Mutuma for the accused to be released on bond. I have considered the objection by the state.
2. The accused faces a charge of murder contrary section 203 of the Penal Code. Bail should not be denied unless there are compelling reasons in **Dominic Karanja V. Republic** The High Court observed as follows as the guiding consideration in an application for bail pending trial:
 - i. *The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.*
 - ii. *The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.*
3. In this case the accused cut his wife and also their child and then went into hiding according to his own statement under inquiry. The child did not survive. After the attack the accused also burnt down the family home with all the property in it. From the circumstances of the case, and given the fact the incident took place recently I find it will be unwise to release the accused on bail. The accused committed three serious offences, felonies on the same day. There is no evidence of provocation on the fact of the record.
4. The accused has a tendency to be violent. Considering only key evidence will be family members one of who was also attacked during this incident. I decline to grant bail to the accused as I am satisfied he may interfere with witnesses and secondly his release may raise danger on the life of the surviving victim.
5. The application is accordingly dismissed.

DATED SIGNED AND DELIVERED THIS 11TH DAY OF JULY, 2012

LESIIT J.

JUDGE.