



REPUBLIC PROSECUTOR

VERSUS

M M M ACCUSED

R U L I N G

The accused, a minor aged 17 years, is charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 9th day of December 2011 at [particulars withheld] Igembe District within Meru County the accused murdered B A

On 26.11.2012 the accused pleaded not guilty to the charge. The matter was fixed for hearing on 29/30/10/2012. Meanwhile, the accused is remanded in custody at Nyeri Children Home.

On 16/1/2012, when matter came up for the first time for plea taking the learned Advocate, Mr. Ndubi, for the accused minor applied for bail pending trial under Article 49 (1) (b) of the Constitution of Kenya. He submitted that the accused had been in G.K. Prison at Meru since 13th December 2011 and that he should be remanded at G.K. prison with facilities for minors in the alternative if that is not possible the minor be admitted at personal home upon such terms that court may please. He submitted that the accused minor ought to be granted personal bond and that the minor will be available in the court whenever required. He submitted that the accused is a standard VI pupil at Gatanga Primary School. The learned State Counsel Mr. Motende requested for two weeks to report from the probation officer before responding to the application. He further needs report on accused mental assessment on whether he was fit to plead.

The probation officer in his report dated 26/1/2012 stated that he interviewed the relatives of both the deceased and the accused person. The accused was also interviewed. The accused terminated academic education while in standard IV and ventured into casual employment as a miraa farm hand in his neighbourhood beside doing food crop farming at the family's land. It is post conduct is reportedly good. The parents of the deceased person expressed pain though the two families have intermarried, and have no problem with accused's release, they fear that the deceased's brothers are still bitter and the accused if released so soon that may trigger animosity and possible wrath from the brothers of the deceased. The area chief and neighbours interviewed felt that the matter is still too fresh in the heart and minds of the affected for the release of the accused on bail. They said the accused may not abscond but he should remain in custody for several months before being released.

The accused relatives interviewed expressed interest towards the accused person's possible release on bond. They said they are ready to offer security and ensure that he attends court up to the conclusion of the case. The report show that the accused and deceased were very close friends and spend most of the time together. Article 49 (i) (h) of the Constitution of Kenya provides:-

“49. (1) An arrested person has the right—

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

Under Article 49 (i) (h) of the Constitution of Kenya, an arrested person pending charge or trial has the right to be released on bond or bail, on reasonable conditions, unless there are compelling reasons.

In the case of **Girdhar Dabji Masrami vs. R [1960] E.A.L.R. 320** Sheridan, J. in referring to an order pending bail by Lewis, J which order reads as follows:-

‘ORDER’

In my opinion, the modern practice as to bail should be this. In bailable offences, an accused should normally be granted bail unless there are exceptional circumstances against it. For example:-

1. Where there is a real likelihood that the accused will not appear at the trial.

2. Where there is likelihood of the offence being committed while on release, and

3. Where the accused has previous conviction.”

Stated as follows:-

“The court has discretion in the matter. With respect to Lewis, J. his order appears to apply more to considerations which should govern the grant or refusal of bail before conviction than just conviction.”

In view of the provisions of Article 49 of the Constitution of Kenya and the above mentioned authority an accused person has a right to be released on bond or bail unless there are compelling reasons.

The accused herein is charged with a serious offence. The offence of murder with which the accused is charged has a severe sentence. If accused is convicted stands to be sentenced to death. The thought of being sentenced to death on conviction is an incentive for anyone to abscond if released on bond or bail. The probation officer in his report has stated that the accused person and the deceased were neighbours and friends. That the deceased and accused families have blood ties and even shared cost of funeral. The witnesses who state may call may be close relatives. The accused may on being released interfere with the witness or may if released bring the families together and consider negotiating or entering into plea bargain. The probation officer’s report points out that there is general consensus that if the accused is released on bond he cannot abscond. That though accused has dropped from school the probation report states that his past record is good. The report do not show that if the accused is released on bond or bail there is a likelihood of him committing an offence while on release. The accused has no previous conviction.

Considering the rights of the accused to be released on bond or bail pending trial unless there are compelling reasons and the facts before me, and there being no compelling reasons or exceptional circumstances against granting bail or bond, I am of the view that the accused minor may be released on bail pending his trial. In view of the serious offence with which the accused minor is charged or faces, I grant accused a personal bond with a surety of Kshs. 1,500,000/=.

The accused person will be required to report every three months to the officer-in-charge Mutuati Police Station with the first fresh reporting being on 12th April 2012. The officer-in-charge Mutuati Police Station will be required from time to time to make report to this court on accused person's adherence to the order of this court.

This case shall be heard on 29th and 30th October 2012 as previously set.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF FEBRUARY 2012.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN PRESENCE OF:

- 1. Mr. Ndubi for the Accused**
- 2. Mr. Mungai for the State**

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J. A. MAKAU

JUDGE