



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE 72 OF 2007

REPUBLIC..... PROSECUTOR

VERSUS

CHARLES MWITI KINYUA.....1ST ACCUSED

JOHNSON MUTUA JAPHET.....2ND ACCUSED

PETER MURIITHI MWANGI.....3RD ACCUSED

RULING

The accused have been for the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence as stated in the information are as follows:

On the 25th September, 2007 at Chaaria, in Kariene Location, in Central Imenti District of the Eastern Province, jointly with others not before court murdered *JASON MBAABU BENARD*.

After the trial had started, Mrs. Ntarangwi applied for bail/bond in favour of all the three accused persons. Besides the above she also explained that the accused were first arraigned in court on 13th November, 2007. In addition to the above she also submitted that this matter has been handled by three judges who were all transferred. While making the application she relied on article 49 of the Constitution. The learned counsel also submitted that the accused persons will abide with all the conditions for bail. On the other hand Mr. Motende who appeared for the State has opposed the bail application. He submitted that he was relying on the affidavit sworn by PC. Fredric Wambua. In particular the learned State Counsel has relied on paragraph 6 and 7 of the affidavit which states as follows:

“6. That all the prosecution witnesses reside from the same locality and some are their neighbours who were key prosecution witnesses therefore there is a high possibility that the witnesses would be threatened by the accused persons who know the kind of evidence they tendered against them and inflict fear on them or commit further offences since so far they have known the direction this

matter is taking.

7. That during gathering of information from the ground I was informed by an informer which information I verily believe to be true that there is a high probability of the accused persons absconding and also deceased's community swore to revenge, meaning that the lives of the accused persons will be in danger if released on bail at this stage."

Apart from the above, the learned State Counsel submitted that this is a part heard matter in this court and the same has almost been concluded to enable the court make an informed decision. In addition to the above he also submitted that some of the prosecution witnesses who testified come from the same locality with the accused persons. He also contended that since the accused persons have already known the evidence tendered by the witnesses, there is a high possibility that the witnesses may be threatened. Mr. Motende was also of the opinion that the accused persons may commit other offenses. That apart he also submitted that there is also a high probability that the accused may abscond. In conclusion the learned State Counsel submitted that there is also a probability that the deceased clan may revenge the death of their clan's man. He was of the view that for the sake of the accused security it would be prudent that the accused remain in custody till the case is heard and determined. According to the State Counsel the State has provided compelling reasons that the court should consider. On the basis of the above he stated that it is not suitable to release the accused persons at this stage.

This court has carefully considered the submissions made by the counsels. Besides the above I have also carefully considered the affidavit which was signed by PC Wambua. The said officer visited the scene of the crime and collected information relating to the commission of the offence. Apart from the above the said officer has stated categorically that it would not be safe to release the accused on bond at this stage. This court is very alive to the fact that the accused have been in remand for a period of about 5 years due to the constant transfer of Judges. It is also on record that three judges who handled this file were transferred to different stations. However, this is now a part heard case before me and all things being equal the prosecution will avail their witnesses before the case is determined. Given the possibility that the release of the accused on bond may disturb the security and the tranquility of the local area I hereby respectively decline to release the accused on bond at this stage. In the event that the security situation improves then the accused persons will be at liberty to renew their application. Though I have declined to release the accused on bond I hereby direct the prosecution to avail all their witnesses during the next hearing date. Those are the orders of this court.

MUGA APONDI
JUDGE

Ruling read, signed and delivered in open court in the presence of

Mrs. Ntarangwi Defence Counsel
Motende State Counsel

MUGA APONDI

JUDGE
26TH JUNE, 2012

Court: Further hearing on 23rd and 24th July, 2012. Accused RIC.

MUGA APONDI

JUDGE