



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CIVIL SUIT 19 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

SILAS MURITHI MIRITI ALIAS KANU.....1ST ACCUSED

JOHN GICHUNGE ABUAGE.....2ND ACCUSED

JAPHETH GITONGA KOBIA.....3RD ACCUSED

GEOFFREY KIMATHI MIRITI.....4TH ACCUSED

RULING

The accused have been charged 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:

Between the nights of 11th and 12th March, 2010 at Kiambogo Village Kirimara Location in Buuri District within Meru County jointly murdered *ELIUD MWIRIGI*.

On 4th June 2012 the defence Counsel Mr. Otieno applied for bond/bail in accordance with article 49 as read with article 50(a) of the Constitution on behalf of the accused persons. The learned counsel submitted that the accused persons are citizens of this nation. Besides the above he pointed out that accused 1 and 3 are brothers. On the other hand he also submitted that accused 2 and 4 are also brothers. He also contended that all the four accused persons have fixed abodes as they hail from Kirimara Location in Buuri District. In addition to the above, he also submitted all the four are married

with children and they are the sole providers of their families. According to the learned counsel, the four accused have assured him of their willingness to attend court on being released on bond. The four accused have also assured him that they are peace loving persons. On the basis of the above he has urged this court to grant them bail.

In response Mr. Motende who appeared for the Republic requested this court to call for a probation report. On 12th of June 2012 this court received probation reports relating to all the accused persons. As far as the 1st accused is concerned the officer made the following conclusion and recommendation;

“My lordship, this suspect is a young family man from a poor peasant family. He and other suspects are close relatives and lives in the neighbourhood of victim’s family. The social relationship within the community can be qualified to be normal and conducive since no objection was noted from both sides concerned. Though suspect’s family is poor, they are willing to have the suspect released on lenient bond they can afford to provide. Having fixed abode and a good past character record depicts minimal chances of absconding or interfere with proceedings of matter before court. His is thus recommendable for bond.”

As far as the 2nd accused is concerned the probation officer stated as follows:-

“My lordship, this suspect is a family man with 3 young schooling children dependent on him. He resides at home and works in his allocated farm. The community, family of the victim and local administration are positive as regards bond. Home environment is conducive and there is no likelihood of interference with the ongoing case facing him. The honourable court can consider awarding him bond as prayed.”

In the case of accused 3 the probation officer stated as follows:

My lordship, this suspect before you is a young man with a young family that he was providing for. The environment in the community has was living is peaceful and welcoming if he is given bond. At the same time he assures the court that he will abide by court orders to attend the hearings as required. The new constitutional dispensation, your lordship, gives him a right to a bond after several consideration. The above sentiments expressed may guide the court to rule accordingly.”

Lastly the probation report for accused person states as follows:

“My lordship, this suspect before you has a brother and neighbours, who are still brothers, charged for this serious offence. The precedents set in the environment they live attest to a harmonious co existence. At the same time there is assurance that he will abide by the court order to attend the hearings as required. The new constitutional dispensation is awash with the terms to consider thereof for bond to offer. Within the above backdrop, the court is persuaded your lordship to exercise its discretion and rule accordingly.”

After the reports were filed both the defence counsel and the State Counsel urged this court to exercise its discretion. Having carefully considered the pre-bail reports by the probation officers I hereby find that the same are favourable to the accused persons. After carefully considering the above I hereby concede to the application. In that regard I hereby direct that each accused may be released on a cash bail of Ksh.250,000/-. Alternatively each accused may be released on a bond of Ksh.250,000/- with two sureties of a similar amount. Those are the orders of this court.

MUGA APONDI

JUDGE

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

Otieno Defence Counsel

Motende State Counsel

MUGA APONDI

JUDGE

26TH JUNE, 2012