



REPUBLIC OF KENYA

High Court at Meru

Criminal Case 25 of 2010

REPUBLIC PROSECUTOR

VERSUS

JOSEPH KIRIMI 1ST ACCUSED
ZACHARY KARUNGU 2ND ACCUSED
NICHOLAS KIBAARA 3RD ACCUSED
SILAS KITHEU NDIVO 4TH ACCUSED

RULING

The accused persons had been charged with 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 3rd day of January, 2010, at Ngongoaka Village, Kunati Sub-Location, Thangatha Location, Tigania District within Meru County, jointly murdered Julius Gitonga.”

On 31st July 2012, the applicants’ counsel Mr. Murango Mwendu applied for bail for the accused. According to the learned counsel, the applicants had given him an undertaking that they will attend court when they are required to do so. In addition to the above, he also submitted that the offence took about 3 years ago and that the accused are Kenyan citizens who have families. Besides the above, he also submitted that they are all persons of good character and do not have any records of a criminal nature. It was his contention that he was relying on Article 49 of the Kenyan Constitution. In conclusion, he urged this court to grant the accused persons affordable terms of bond.

On the other hand, Mr. Motende who is the State Counsel requested the court to call for a pre-bail report from the probation officer who is covering the area where the accused hail from. Consequently, on 2nd October 2012, this court received the pre-bail reports relating to all the 4 accused persons. The reports made the following conclusions:-

1ST ACCUSED PERSON – JOSEPH KIRIMI M’TUMBURI

CONCLUSION

Your Lordship, the accused person before you is a young man with a very young family. He is a father of two children all very young and only one in school. Although the family has a large piece of land, the land is unregistered and therefore has no title deed. Economically, the family is very poor and depends on subsistence farming for their livelihood. The family has a fixed abode. The community

members are receptive and none is opposed to the accused being relapsed on bond.

RECOMMENDATION

My Lord, considering the above findings, I find the subject suitable for bond. This is subject to your Lordship's final decision.

2ND ACCUSED PERSON – ZACHARY KARUNGU RWANDA

CONCLUSION

Your Lordship, the accused person before you is a young man with a very young family. He is a father of three children all very young and in school. Economically the family is very poor and although they own a large piece of land, it is unregistered and therefore has no title deed. The family wholly depends on subsistence farming for their livelihood. He has a fixed abode and with a very stable family. The community members are receptive and none is opposed to the accused being released on bond.

RECOMMENDATION

My Lord, considering the above findings, I find the accused suitable for bond. This is subject to your Lordship's final decision.

3RD ACCUSED PERSON – NICHOLUS KIBAARA MAKEMBO

FINDINGS

This is to inform your Lordship that a pre-bail report in respect of the accused Mr. Nicholas Kibaara Makembo was filed in case No. 2 of 2012 (Consolidated file in this matter) and a bond of Kshs. 3 million granted.

4TH ACCUSED PERSON – SILAS KITHETU NDIVO

CONCLUSION

My Lord, the accused person before you is young and with a very young family. All his children save for the last born are in school. Economically, he is very poor. His family members and friends are willing to stand surety for him and ensure that he abides by the terms and conditions of the bond/bail if granted. Currently, there is calm between the victim and the accused community members and none is opposed to the accused being granted bond. The local assistant chief and village elders are ready to assist in case the accused jumps bond.

RECOMMENDATION

My Lord, considering the above, I find the accused person suitable for bond/bail, subject to your final decision.

On receipt of the pre-bail reports, the learned State Counsel described them as suitable to all the accused persons. Despite the above, he also urged this court to decline to grant bail to the accused persons till the witnesses who have been bonded on 12th and 13th November 2012 testify in court. On the other hand, Mr. Mwenda Mwarania who appeared for the applicants urged this court to place all the accused persons on bond pending trial. He emphasized that the pre-bail reports are favourable to the accused persons and the fact that the hearing is coming next month, is not a good reason to decline granting them bond. Apart from the above, the applicants' counsel also submitted that there is no guarantee that the matter will be determined in November 2012. He concluded his submissions by urging the court to grant the accused bail on reasonable terms.

This court has carefully considered the pre-bail reports that have been filed by the probation officer. In addition to the above, this court has also considered the above submissions by the learned counsels. There is no doubt that the pre-bail reports are favourable to the accused persons. Apart from the above, the learned State Counsel omitted to submit any compelling reasons which will stop this court from granting bond to the accused persons. Infact the learned State Counsel himself had conceded earlier that the said pre-bail reports are actually favourable to the accused persons. Therefore the issue of waiting for witnesses to give evidence is neither here nor there. Given the above analysis, I hereby direct that each accused may be released on a cash bail of Kshs. 250,000/=. Alternatively, each accused may be released on a bond of Kshs. 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:-

MR. MOTENDE - STATE COUNSEL

MR. MBAABU FOR MURANGO MWENDA - ACCUSED COUNSEL

ACCUSED - PRESENT

MUGA APONDI

JUDGE

18TH OCTOBER 2012