



CRIMINAL LAW

- **Bail pending trial**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 81 OF 2010

REPUBLICPROSECUTOR

VERSUS

ROBERT KIMATHI MATE.....1ST ACCUSED

PETER GITONGA NJAGI2ND ACCUSED

JOHN MICHENI KAKUNYI3RD ACCUSED

RULING

The three accused are charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. On 17th January 2011 the three accused pleaded not guilty to that offence. They are now awaiting trial on a date to be fixed by the court. They applied for bail pending trial. Our constitution under Article 49 (1) (h) recognizes the right to bond or bail of an arrested person. That Article provides as follows:-

***“49. (1) An arrested person has the right –
(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.”***

To assist me to consider the accused application, I requested the probation officer to prepare for each accused person a pre bail report. Those reports are before me. In respect of the 1st accused Robert Kimathi Mate, report reveal that he is a married man with five children. Although he did not progress very far in his education, he obtained training in brick making which earned him a contract with G.T.Z. He was described by the probation officer as a man of good conduct. When approached, the deceased family and the local administration in respect of the three accused, were not in favour of the accused being released on bail. No reason was assigned to that objection. The 2nd accused Peter Gitonga Njagi is married with four children. He was described as a sociable person. He is the bread winner of his family. The 3rd accused, John Micheni Makunyi, is also married with two children. Just to quote what the probation officer stated about him, he said:-

“The accused is said to be of very good conduct.”

In respect of all the accused persons, the probation officer was positive in respect of their application for bail. The learned state counsel Mr. Kimathi did not oppose the applications. In considering the applications before me, I am well guided by the case **Langat Vs. Republic** [1986] KLR 608 where the court held:-

“Every person who is charged with a criminal offence is presumed to be innocent until he is proved or pleads guilty but that does not mean that such person cannot lawfully be detained in custody for trial if he is charged with a criminal offence.”

Bearing in mind the reports made by the probation officer, the submissions of counsel, I am of the view the applications should be granted. More so, we are presently as a judiciary experiencing an acute shortage of judges. The High Court at Meru, in my view, has a work load which requires six or more High Court judges to be able to deal with the work load. At present, we are only two judges serving in this station. As a consequence of that shortage, many accused persons on murder trial are remanded in jail for years whilst awaiting the conclusion of their case. It is not unusual for persons on murder trial to wait in excess of seven years for their trial. Bearing in mind the principle of law stated in the case above that persons are presumed innocent until proven guilty, the situation in this High Court at Meru is a sorry state of affair. With that in mind, I grant the following orders:-

- 1. I order that the three accused persons be released on bail pending their trial on their own bond of Kshs. 4,000,000/= and a surety of a similar amount.***
- 2. The three accused persons will be required to report every three months to the officer-in-charge Chuka Police Station with the first such reporting being on 1st March 2011.***
- 3. The officer-in-charge of Chuka Police Station will be required from time to time to make a report to this court on the accused person’s adherence to the order of this court.***
- 4. This case shall be mentioned before court 1 for purpose of fixing a hearing date on 28th February 2011.***

Dated, signed and delivered at Meru this 17th day of February 2011.

MARY KASANGO
JUDGE