



CRIMINAL

- **Bail pending trial.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CR. CASE NO. 87 OF 2009

REPUBLICSTATE COUNSEL

VERSUS

BONIFACE MUTEMBEIACCUSED

RULING

An application was made on behalf of the accused that he be released on bail pending trial. The accused is charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. In the particulars of the offence, it is shown that the offence was committed on 3rd October 2009. In order to assist me to reach a decision whether to grant the application, I requested the probation officer to do a pre-bail report. I have considered that report. The accused person mother was stated in that report to be an irresponsible person who is also a drunkard. The community that was interviewed by the probation officer did not approve of the accused being released on bail. The probation officer's report in short stated as follows:-

“The community members interviewed expressed their displeasure on possible release of the subject on bond.The victim's relatives also talk bitterly about this heinous offence, One of the witnesses has received threats from the accused associates.”

Although the constitution of Kenya 2010 under Article 49 (1) (h) a person is entitled to be released on

bond or bail on reasonable conditions, that entitlement is not absolute. The court is obligated to look at the surrounding circumstances that would either endanger the life of the accused person or the life of the victim if bail was to be granted. In this case, both the circumstances are to be found. There seems to be a high likelihood that the accused life may be harmed if he is granted bail pending trial. The ordinary person in the street who does not understand the intricacies of the law may consider such a release as an acquittal without trial. In this region of Meru there have cases of members of public carrying out mob justice to one that they consider to be guilty. With that in mind, I reject the application for bail pending trial. The trial will continue from where it stopped.

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

MARY KASANGO
JUDGE