



CRIMINAL

- **Application for bail pending appeal.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 24 OF 2010

REPUBLIC.....STATE
COUNSEL

VERSUS

EUSOBIO KOBIA RUGONJI1ST
ACCUSED

EDWARD GUANTAI RUGONJI2ND
ACCUSED

AYUB MUCHUI RUGONJI3RD
ACCUSED

PATRICK MUTWIRI RUGONJI4TH
ACCUSED

STEPHEN MWINGIRWA RUGONJI5TH
ACCUSED

PITOLIO KATHURE ALIAS VENACIO MUNGANIA ALIAS REGINA KATHURE..... 6TH
ACCUSED

T.G.M ALIAS T.M7TH
ACCUSED

RULING

The 7 accused persons face the charge of murder contrary to section 203 as read with section 204 of the Penal Code. The 7th subject is a minor. The 6th accused person is his mother. Plea was taken before court

on 10th June 2010. Because of the age of the subject by then 15 years, the court ordered that this case be fast tracked. However, because of the sheer volume of the backlog of cases in this station, this case has yet to be concluded. It is because of that that the court on its own motion requested the probation officer to prepare a pre-bail report on the 6th and the 7th subject persons. This was in accordance with Article 49 (1) (h) of the Constitution. This Article provides as follows:-

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

- a)***
- b)***
- c)***
- d)***
- e)***
- f)***
- g)***

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.”

As it can be seen from that sub Article, persons who are arrested have a right to be released on bail at reasonable conditions. The probation report on the 6th accused person is favourable to the accused being released on bail pending trial. The probation officer carried out interviews in the locality where the 6th accused person comes from. To give just an idea of what the community thinks of the 6th accused person, I will quote part of that report as follows:-

“The area chief and the village elder said that she (6th accused) is a very good woman who is loved by the members of the community. The members of the community together with the Small Christian Community of Marega Catholic Church conducted a fund raiser to pay the university fee balance of her son George Karithi while the suspect was in remand.”

The probation officer concluded by stating that this act of fund raising was an indication that the accused person gets on very well with members of her community. It however came out clearly in that probation report that there had been a long standing land dispute between the 6th accused person’s family and the deceased family. This dispute culminated in the death of the deceased. The deceased family members and in particular the eldest son of the deceased considered the 6th accused person as the mastermind of the

murder of his deceased father. It is for that reason that I decline to release the 6th accused person on bail pending trial. It does not escape my attention that it is possible for the deceased family to take their revenge against the 6th accused person for what they perceive to be her role in the killing of the deceased more so if she is released on bail. The 7th subject however is now a 16 year old boy. The probation report stated that the community and the members of the deceased family were of the view that the 7th subject is well disciplined and does not keep company with badly behaved children. He, at the time of his arrest, was attending K Primary School and was living with his sister who resides near that school. I am of the view that to continue to detain the subject in remand at the children's home may adversely affect this young man's educational future. It is for that reason that I order that he be released on his own bond of Kshs. 50,000/=. I request the children's officer attached to this court to make arrangements for the subject, **T.G.M alias T.M** to be taken to his sister's home. In that regard, the probation officer who interviewed the sister will give assistance to the children's officer to enable the children's officer locate the whereabouts of the said sister. The bail application of the 6th accused is rejected. At the reading of this ruling, the court will fix further hearing dates of this case.

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

MARY KASANGO
JUDGE