



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.108 OF 2018

REPUBLIC.....PROSECUTOR

- VS -

SEBASTIAN MIRITI SAMUEL.....ACCUSED

R U L I N G

1. The accused, **Sebastian Miriti Samuel**, is 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 are that, on 24th January, 2014 at around 08.00 hrs at Ngutu Sub-Location, Githu Location in Tigania Central Sub-County within Meru County jointly with others before and others not before court, the accused murdered **Joseph Muthamia**.

2. He pleaded not guilty and applied for bond. The prosecution opposed the application vide a replying affidavit sworn by C.I. Charles Mwangi of Mikinduri Police Station. The prosecution contended that the accused is evasive, conniving, wealthy and extremely influential in his locality. That it took a change of 4 commands at the local station for the accused to be finally apprehended and charged with the present offence.

3. It was further contended that subsequent to the murder, the accused with others evicted the deceased family out of the ancestral home and took possession thereof. That the accused with others detained and abducted one Gideon Mwitika, a prosecution witness, and harmed him.

4. Further, that the accused has other cases pending before the Chief Magistrates Court, at Tigania. It was further contended that this matter is connected with **Meru HC Cr. Case No. 7 of 2014** in which bond for the accused had been cancelled.

5. The accused responded to those allegations vide a replying affidavit sworn on 27th February, 2019. He denied having colluded with anyone to evade his arrest; that the cases he faces in the Tigania Court were lodged well before the present offence was allegedly committed; that he had pleaded not guilty in the offences referred to and his presumption of innocence should therefore prevail.

6. He further, denied that he had interfered with any witness and promised that he was prepared to abide by all terms that may be set for the performance of his bond.

7. The court ordered for a pre-bail report which was availed. It recommended that the accused be granted reasonable bail and bond terms pending the hearing of his case. The report stated that the children of the victim had been interviewed. That there had been no report of interference of witnesses.

8. I have carefully considered the contentions of the parties. Since **Meru HC Cr. Case No. 7 of 2014** was referred to and alleged to be related to this case, I called for that file and I perused the same. I confirmed that the deceased therein is **Joseph Muthamia** who was allegedly murdered on 24th January, 2014 as in this case.

9. The cases referred to by the prosecution and the charge sheets produced by the accused show that the charges therein occurred well before the alleged murder in this case. The said cases were identified as **Cr. No. 535 of 2015 Republic vs. Sebastian Miriti & 4 others** and **Cr. Case No. 290 of 2014 Republic Vs Sebastian Miriti**.

10. That notwithstanding, those cases relate to the same dispute that led to the offence in this case. They also relate to persons familiar to and or related to the deceased. **Cr. Case No. 82 of 2016 Republic vs Sebastian Miriti & 3 others** where the accused has been charged with robbery with violence relates to **Gedion Mwitika** (as the complainant) whom the prosecution allege is also a witness in this case. The offence the accused person has been charged with occurred on 10th December, 2015 and the case is still pending in court.

11. In **R. V. Richard David Alden (2016) eKLR**, the Court held:-

“The Bail and Bond Policy Guidelines were formulated specifically to guide the police and judicial officers in the administration of bail and bond. The guidelines set out what the courts should bear in mind when considering an application for bail. They are similar to those set out under Section 123A of the Criminal Procedure Code. These general considerations are: the nature of the offence; strength of prosecution case; character of the accused and antecedents; failure by the accused to observe previous bail and bond; witness interference; protection of the victim; relationship between the accused and the potential witness(es); whether the accused is child offender; whether the accused is flight risk; if the accused is gainfully employed; public order; peace security; and whether there is need for the protection of accused person.”

12. The main issue for consideration is whether or not the accused will interfere with the witnesses; the nature of the offence; the character of the accused and antecedents and public order, peace and security.

13. In Republic v Gerald Mutuku Nyalita & another [2015] eKLR the Court held:-

“.....In considering the likelihood of interference with witnesses as a compelling ground to refuse bail in terms of Article 49 (1) (h) of the Constitution of Kenya, the Prosecution must, in my view, demonstrate a more than whimsical probability of interference. It must be shown that the accused persons are in such close family, filial or other relationship which creates an environment of control and influence of the witness by the accused person such as to interfere with the ability of the witness to give evidence before the court in a free and truthful manner thereby affecting either the credibility of the witness in his or her testimony before the court or the very ability of the witness to attend court. The tenderness of age or the mental acuity of the witness may be factors to be considered in the determination as to the likelihood of interference. The nature of the testimony of the witnesses – as eye-witness or circumstantial – is also relevant....”

14. I will add here that it is not only the closeness of the accused to the witnesses that is crucial, if the accused can influence the witnesses be it subtly or even through threats, it is a fact to be considered. All in all, the court is obliged to balance the right of an accused person against the public interest in prevention of crime and access to justice by the victims of the crime.

14. In K K K v Republic [2017] eKLR it was held:-

“.....The key is in adopting a path that ensures prosecution of the offences in a manner that is least restrictive of enjoyment of the accused’s right to bail. Where an expedited hearing is possible, the same should be ordered; where the witness protection measures guarantees no interference of the complainant or other witnesses by the accused, he may be released on bail as with where the evidence may be secured; and where the witnesses are prone to interference by the accused or other persons for his benefit, the testimony of such witnesses should be taken before the accused is released on bail.....”

15. Bail bond is a constitutional right to every accused person. It can only be denied where there are compelling reasons. The accused in this case has pleaded not guilty to the charge and is presumed to be innocent until proven guilty. His liberty is never to be curtailed unless there are good reasons to do so.

16. In the present case, his character is wanting. He already has two criminal cases pending in the Tigania court which are at the defence stage. Those cases allegedly arise from the same transaction that finally resulted in the present offence. The investigation officer swore on oath that it took 4 command changes at the Mikinduri Police Station for the accused to be apprehended. The accused stated that he was a humble, innocent and low tea farmer who could influence not the police. However, the court notes that he was arrested and charged after 4 years since the offence was committed.

17. There was the issue of interference of prosecution witnesses. The case of **HC Cr. Case No. 7 of 2014** was referred to and the court perused the record thereof. The investigations officer in this case made a direct allegation that the accused was one of the people who attacked and chopped off the hand of one **Gedion Mwiti Kaane**, a witness in this case as well as in **HC Cr. Case No. 7 of 2014**.

18. This specific allegation by the investigations officer at paragraph 11 of his replying affidavit was not denied or challenged. A perusal of **HC Cr. Case No. 7 of 2014** shows that, the said **Gedion Mwiti Kaane** testified in that case and gave a chilling narration on how his hand was chopped off with a view to prevent him from testifying in that case. He specifically mentioned the accused in this case as one of the people involved in the brutal attack. When he testified, he did not have one of his fore limbs. The court notes that this and that case are related and they relate to the same offence.

17. The cases that the accused face a Tigania court relate to issues of public safety. The investigations officer testified that the offence in this matter had led to other incidents of general insecurity in his area of jurisdiction.

18. I have noted the pre-bail report. Despite its recommendations, having reviewed all the necessary issues and evidence available before this court, I am satisfied that there exists compelling reasons not to grant the accused bond. The application for bond is declined. The accused will stand trial while in custody.

19. However, I direct that the hearing of the case commences immediately with a view to do away with the civilian witnesses as soon as practically possible.

DATED and DELIVERED at Meru this 14th day of March, 2019.

A. MABEYA

JUDGE