



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 1 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FRANKLINE MWENDA KIUGU.....1<sup>ST</sup> ACCUSED**

**SAMSON MWIRIGI KIUGU.....2<sup>ND</sup> ACCUSED**

**RULING**

1. Bail is a constitutional right. Article 49(1) (h) of the Constitution specifically provides that an accused 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. [Emphasis mine]**

2. In this case the accused persons are charged with murder c/s 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya.

3. The prosecution submitted that the accused persons ought to be denied bail because there is still hostility from the community. They relied on the Pre- Bail report made by **Patrick Kobia**, Probation Officer Meru dated 14/6/2018. It specifically states that the accused persons mother vacated from where she resided and moved to Ruiru after members of the public threatened to lynch her. It also stated that a mob burned all the property belonging to the accused persons and their mother.

4. **Mrs Ntarangwi** Counsel for the accused person submitted that the accused may move to a new location and reside with their relatives i.e. at Ruiru. But Mr. Namiti for state responded to this proposition and requested that the accused persons be asked to file an affidavit of intended sureties and proposed abode and how they will ensure attendance in court.

5. This Court on 7<sup>th</sup> March 2019 directed that the accused persons provide the fore stated affidavits but none was filed.

6. Whereas I have lamented before about members of the public taking the law into their own hands and harming accused persons, it is clear from the Pre-bail report that there is imminent danger on the lives of the accused persons. This is borne from the actions of the Community before arrest and during interviews carried out for purposes of the Pre-bail inquiry. Such uncouth behaviour should be stamped out of this society by taking firm and appropriate legal action against any person or persons who take the scourge of revenge upon themselves as if no law existed. In saying these things, I am acutely aware that the state should provide security to each and every citizen and resident of Kenya. That notwithstanding, however, I do not wish to experiment with the lives of the accused persons.

7. Unfortunately, neither the accused persons nor the proposed sureties filed an affidavit on alternative and safe abode which the court may consider. The material before me shows that it would be perilous to release the accused on bond. In any event, their attendance in court cannot be guaranteed. Accordingly, I find these two reasons to be compelling reasons and deny the accused bail. Their application for bail is accordingly declined.

**Dated, signed and delivered in open court this 12<sup>th</sup> day of June, 2019.**

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**F. GIKONYO**

**JUDGE**

**In presence of**

**M/S Otieno for accused**

**Accused present**

**Namiti for state**

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**F. GIKONYO**

**JUDGE**