



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 61 OF 2018

REPUBLIC.....PROSECUTOR

Versus

PAUL NGEERE.....1ST ACCUSED PERSON

DOUGLAS KAUGERIA.....2ND ACCUSED PERSON

RULING

1. I have considered the Application for bond made on 25th July 2018. I have also taken into consideration the Pre-bail Report dated 1st July 2019 and the submissions by Counsels for the accused persons. The prosecution did not oppose the application.

2. The report makes strong suggestions that the security of the accused persons is not guaranteed at the moment as tension is still very high. The family of the accused persons were interviewed and resonates with the suggestions; they are not ready to have the accused persons released at the moment for they also fear for their lives.

3. The Probation Officers Report concludes that there is reasonable fear that the community may take the law in their hands and lynch the accused persons.

4. I have lamented, not once, not twice but times without number that it is archaic, barbaric, out of order and unlawful for members of a community or public to take the law into their own hands to lynch a suspect of a crime. I should state here that it is time law enforcement machinery dealt firmly with such disgruntled elements through thorough investigations and effective prosecution thereof in order to rid the society of the said uncouth behaviour of lynching suspects of crime. I am tired to fathom that our own society which should be a stakeholder in prevention of crime has turned itself into an agent of crime. I hope the fear that the community will avenge upon the accused and kill them will cease to be a reason to deny an accused bail or bond.

5. Be that as it may, I am acutely aware that only where compelling reason exists will an accused person be denied bail. The Constitution has cast its eyes on the right to bail by declaring it first in article 49 of the constitution of Kenya. Deprivation of the right is merely a limitation which must meet the high constitutional threshold and sufficiently justified in law. See **Republic v Diana Suleiman Said & another [2014] eKLR** in relying on the Indian cited case of **Masroor v. State of Uttah Pradesh and Anor. 2009) (14) SCC 286** stated as follows:

“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.”

6. See also a masterly exposition on deprivation of liberty of an individual by Mativo J in **Republic v Daniel NdegwaWachira [2015] eKLR** thus;

“By definition, an in alienable right is a sacrosanct right, an absolute, unassailable and inherent right and not transferable. It is a non-negotiable right. Like the right to life, a fundamental inviolable right. Compelling reasons is a qualification to the right to bail. The principle of the right to bail is more poignantly described in Republic vs Ahmed Mohamed Omar & 6 others[4]where Ochieng J agreed with the assertion that ‘compelling reasons’ are a qualification to the right to bail..... It has not been alleged that the accused may fail to attend court nor was it alleged that he is a flight risk. In fact his lawyer submitted that the accused is ready to abide by any conditions that this court may impose. Also, no allegations were made that the accused may interfere with the witnesses. Counsel for the Respondents main ground is that the accused may be hurt by the public who may be inclined to revenge. Much as the court is concerned with the safety of the accused, the court takes the view that such an eventuality amounts to acts of lawlessness which ought to be discouraged in a civilized society and

ought to have no place in modern society where law and order is functioning. In any case such allegations are premised on mere apprehension and no cogent proof has been offered. The alleged act of burning the accused house illegal as it is may have been a reaction by the public acting at the heat of the moment and ought not to be a ground to justify continued incarceration of the accused against his constitutional right to be granted bail....”

7. Whereas the pre-bail report presents possible harm to the accused by the community there is no sufficient proof to substantiate the said averment. After careful evaluation of the record I find no compelling reasons to deny bail/bond. Except, however, I do not wish to test the waters using the lives of the accused. For that reason, I direct the accused to file in 14 days affidavits on alternative places where they will reside during the pendency of this case. Based on the information in the affidavits to be filed as above, I will set down other appropriate terms and conditions for the bond or bail. Meanwhile, the accused shall remain in custody until the court has considered the affidavits and set down the terms and conditions of the bond or bail. It is so ordered.

Dated at Nairobi this 12th day of October 2019

.....

F. GIKONYO

JUDGE

Dated, signed and delivered in open court at Meru this 16th day of October, 2019

.....

A. MABEYA

JUDGE