



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 22 OF 2018

REPUBLICSTATE

VERSUS

1. JOHN NJUGUNA MAINA

2. ANTHONY NJIBA KAMAU

3. WILLIAM MWANGI KIMANI (*alias*) WILLY.....ACCUSED/APPLICANTS

RULING

1. The Accused persons herein **Anthony Njiba Kamau, William Mwangi Kimani *alias* Willy** and **John Njuguna Maina** have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the night of 12th August, 2018 at Joska Township of Matungulu Sub-County within Machakos County jointly murdered **JUSTUS SHIKOLI MUSE *alias* WAINGO**.

2. All three accused persons entered a plea of not guilty and matter is now due for trial. Learned counsel for the accused persons has filed an application dated 30/05/2019 seeking that the accused be released on bail/bond pending the trial. The application is supported by grounds on the face thereof as well as in affidavits by each of the Accused/Applicants sworn on even date. The Applicants case is that it is their constitutional right to be admitted to bail as there are no compelling reasons to the contrary which would warrant a denial of bail. It is further the Applicants case that they are ready to abide by the conditions to be imposed by this Honourable court.

3. A replying affidavit sworn by No. 45604 Corporal Johnston Kabubei on 19/06/2019 and filed on 20/06/2019 raised several issues in opposition to the application inter alia; that even though bond is a constitutional right the same is not absolute and that same can be denied where there are compelling reasons; that the 1st accused herein went into hiding after the incident and was only arrested five months later; that the 3rd accused was arrested two months after the alleged murder while the 2nd accused was arrested the same day of the incident; that the 1st and 3rd accused persons are flight risks if released on bond; that there is a likelihood of interference with witnesses if the accused persons are released on bond.

4. This court called for pre-bail reports on the accused persons. The said reports were duly availed and are dated 25/07/2019. The said reports appear favourable to the need to grant the accused persons bond pending the trial save only for the fact that they are likely to interfere with the key witnesses as the accused are a threat to the safety of the witnesses and villagers within Joska area. The family of the deceased appear not opposed to the release on bond on the one hand while at the same time they feel that the case should proceed while the accused persons are in remand.

5. I have considered the rival affidavits and the pre-bail reports. As all accused persons have denied the charges levelled against them then they are deemed to be innocent until their guilt is proved. They now enjoy the presumption of innocence. Article 49(i) (h) of the constitution provides that an arrested person has the right to be released on bond or bail on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released. Even though the investigating officer is opposed to the release of the accused persons on bond, I find the pre-bail reports to be quite favourable. The issue of alleged threats to witnesses can easily be taken care of by stringent conditions where both accused and their sureties are kept on a tight leash. Further any issues of insecurity affecting the accused or the members of public at Joska Township will be taken care of by the police whose sole duty is the maintenance of security for all citizens. Again I note that none of the witnesses concerned have sworn affidavits or written letters regarding issues of interference by the accused persons once released on bond. The right to be released on bond pending a charge or trial is one of the Bill of Rights guaranteed under Chapter Four of the Constitution and can only be denied once credible and compelling reasons have been presented by the prosecution. I find none has been presented.

6. In the result I find the application dated 30/05/2019 has merit. The same is allowed in the following terms:-

(a) Each accused is hereby released on bond of Kshs.1,000,000/= plus one surety of like sum.

- (b) The sureties is to be approved by the Deputy Registrar of this court.*
- (c) Upon release the accused persons shall not interfere with the prosecution witnesses.*
- (d) The accused shall attend court during mention or hearing dates without fail until the final determination of the case or until further orders of the court.*
- (e) In default to observe the terms of bond, the bond shall stand cancelled and the accused plus their sureties called to account.*

Orders accordingly.

Dated and delivered at **Machakos** this **2nd** day of **October, 2019**.

D. K. Kemei

Judge