



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 9 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

WINFRED MWENDWA.....1ST ACCUSED

YUSUF KIOGORA.....2ND ACCUSED

RULING

1. WINFRED MWENDWA (1st Accused) and YUSUF KIOGORA (2nd accused) are both charged with the offence of Murder. They both pleaded not guilty. The deceased was son of the 1st accused.

2. The court is considering the bail application of the 1st accused. Learned Counsel for the 2nd accused, in view of the information supplied by the investigating officer and the Probation Officer's report, chose not to apply for bail.

3. The 1st accused is a 19 years old girl. Her upbringing, as revealed in the Probation Officer's report, was a challenged one. Her single mother has had various relationships with men who were non-committal. It is no wonder that the 1st accused bore a child at a young age and began to live an independent life fending for herself and her child.

4. The 1st accused, from the report, is said to be very traumatized by the death of her child.

5. She comes from very humble background and her mother would not be able to stand surety for her because she only relies on selling cooked food in the market.

6. 1st accused, just like the 2nd accused, are presumed innocent until proven guilty. Accordingly the accused have a right to be granted bail on reasonable conditions, pending trial, unless there are compelling reasons not to be released see **Article 49 (h) of the Constitution**.

7. In respect to the 1st accused this is what the Probation Officer report stated:

- **The accused person has a fixed abode endeavors to earn a living through acceptable means hence she is not likely to be a flight risk.**
- **The community where she lives is willing to accept her back as one of their own and continue living together in harmony.**
- **Her release is not likely to either disturb peace in the community or be dangerous to herself.**

8. Probation Officer's report, just like the affidavit of the investigating officer, filed in this matter are negative toward the granting of bail to the 2nd accused. The Probation Officer's report had this to say about the 2nd accused.

- **The accused person does not have a fixed abode, he fled from his home of origin and keeps shifting to places such that it may be difficult to trace him.**
- **He does not relate well with family members such that they are non-committal to standing surety for him.**
- **Members of the community in Timau, where he used to live, are hesitant to have him back and join them based on his deviant character. His release therefore may be dangerous to him and is likely to disturb order and peace in the community.**
- **When he allegedly committed the offence, he fled from Timau to Kwa Makara and allegedly stole some meat and a weighing machine from a butchery but survived a lynch ordeal by members of the community. He has a history of fleeing.**

In my view the above prove compelling reason why not to grant the 2nd accused bail. He is in danger from the public.

9. In view of the above I decline to grant the 2nd accused bail but do grant bail to the 1st accused.

10. I hereby order **WINFRED MWENDWA** to be released on her own bond of Ksh. 200,000/= . **YUSUF KIOGORA** will continue to be remanded at Nanyuki G.K.Prison pending the hearing and determination of this case.

Dated and Delivered at Nanyuki this 7th February 2018

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1st Accused: Winfred Mwenda

2nd Accused: Yusuf Kiogora

For accused.....

For state:

Language

COURT

Ruling delivered in open court

KASANGO

JUDGE