

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.88 OF 2017

REPUBLIC.....PROSECUTOR

Versus

JULIUS MWITI M' TOIMATHIU Alias EZEKIEL UGUNA...ACCUSED

RULING

Verily, verily...all offences bailable

[1] Verily, verily, verily it is true. By dint of the Constitution of Kenya, 2010, all offences are bailable; quite a departure from the previous position of law where capital offences were not bailable. See Article 49 (1) (h) of the Constitution which 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. No scientific measure of what exactly amounts to compelling reasons; that would depend on the circumstances of each case. Except, now courts seem to be agreed that compelling reason for which a person will be denied bail should be rousing, strong, one that interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. This standard is high and draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given that the Bill of Rights enshrined in the Constitution is a robust one and quite protective. I need not aver-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[2] The accused who has been charged with murder has applied to be released on bail. The court called for pre-bail report which I shall also consider. The pre-bail report painted the accused person in very bad light. His own family members were not ready to stand him surety for they feel that he is a threat to them and the community at large. They were also apprehensive that he might abscond, for he had gone into hiding after committing this offence only to be arrested in Nanyuki. The concerns raised in the pre-bail report are serious matters and I find nothing which negates or may make the court disbelief those concerns. Accordingly, attendance of the accused person during his trial is not guaranteed. And applying the test of the law, I am convinced that there are compelling reasons not to release the accused on bond. On that basis, I reject the accused person's application for bail. Accused will remain in custody until this case is heard and determined. It is so ordered.

Dated, signed and delivered in open court at Meru this 7th day of March 2018

F. GIKONYO

JUDGE

In the presence of:-

Mrs. Mwathi for state

Thangicia for accused