



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. 4 OF 2016**

**REPUBLIC**

**Versus**

**JULIUS KIMARU MICHUBI Alias KABERIA**

**RULING**

**Bail**

[1] The accused person who is charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code CAP 63 of the Laws of Kenya has applied to be released on bond. But, verily, verily, verily, now, all offences are bailable. Except, however, the accused will be denied bail where there are compelling reason to do so. 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. Compelling reasons may not be measured on any scientific measure. They depend on the facts of the cases as placed on the ultimate yardstick- the Constitution. Notably, however, is that the standard for gauging compelling reasons is high for it draws from the constitutional philosophy that no restriction of rights and freedoms of persons without sufficient justification. This solid stance should be understood within the robust Bill of Rights enshrined in the Constitution. But, drawing from judicial precedents so far, compelling reason should be one that is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. I am glad to note that courts have been building a catalogue of instances which may amount to compelling reasons. I need not over-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[2] I will apply this test here. This is the 2<sup>nd</sup> application for bail by the accused. The first one was rejected by Wendoh J on 8<sup>th</sup> November 2016 on valid grounds *sinter alia* that emotions had not cooled down and that there was a likelihood of the accused being lynched if released on bail. I therefore called for current pre-bail report. According to a pre-bail report filed in court on 8<sup>th</sup> March 2018, the area chief and members of the public depicted the accused in very bad light; he is said to be very hostile and brutal to the persons he interacted with especially his family members- conduct that led to his separation from his first two wives who eventually fled from the matrimonial home due to constant battering. His own relatives declined to discuss about his possible release on bail and did not express any willingness to offer security for his release.

[3] Worthy of note here is that none of his own family members accepted to stand him surely if released on bail. I do not find anything to make me disbelieve the contents of the pre-bail report herein. As bail enables the accused to enjoy his freedom but at the same time guarantees attendance at the trial, in the circumstances of this case, there is no guarantee of attendance by the accused at his trial. Accordingly, there is compelling reason not to release him on bail. In the upshot, accused person's application for bail is hereby rejected. Accused will remain in custody until this case is heard and determined. Following that decision, this case shall be fast tracked. It is so ordered.

**Dated, signed and delivered in open**

**court at Meru this 7<sup>th</sup> day of May 2018**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Wamacha for accused person

Mr. Namiti for accused

Accused – present

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**F. GIKONYO**

JUDGE