

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO 11 OF 2015

REPUBLIC

Versus

MORRIS KIMATHI.....ACCUSED

RULING

Bail

[1] On 23rd September, 2015, Wendoh J found that the accused was a flight risk and was unlikely to turn up for his trial. The judge found that to be compelling reason and denied the accused bail. On 2nd of February 2017, the accused sought review of the decision by Wendoh J denying him bail. The application was made before Mabeya J who found that there was nothing to show that circumstances had changed as to warrant review of the decision by Wendoh J. The judge decline the request for review of decision. Again, on 2nd March 2017, the accused renewed his application for bail. Mabeya J directed that he should file a formal application for bail. Pursuant to the said direction, the accused filed a formal application dated 4th May 2017 through M/S KAUME & COMPANY ADVOCATES. As had been sought in that application, a pre-bail report was prepared by Mwangi E.N, a probation officer different from the one who had prepared the earlier report. The report is dated 2nd of May 2018. M/S Kaume submitted that the report did not reveal any serious reason on which the accused could be denied bail. She stated that he was not a flight risk and that he will not interfere with witnesses. Mr. Kiarie for the State relied on the report entirely.

[2] Only presence of compelling reason will make the court deny the accused bail. I will examine the facts presented to determine whether a compelling reason exists or not. The pre-bail report filed stated that the accused is not well known in his home area as he lived in different places all his life. The local administration observed that the accused rarely visits his rural home and very little is known of him and his character. His family, nonetheless, are ready to bail him out. From the circumstances of this case, there is little or no guarantee at all that the accused will attend his trial. The likelihood of absconding is high. It be known that, whereas bail enables the accused to exercise his right to liberty, it should also guarantee his attendance in court. The inextricable nexus between these two objectives of bail means that where attendance at trial cannot be guaranteed, bond should be denied. Flight risk is a compelling reason under article 49(1) (h) of the Constitution. Nothing show that circumstances have changed as to warrant release of the accused on bail. Accordingly, I decline the application dated 4th May 2018. The accused is denied bail. He will remain in custody until the case is finalized. It is so ordered.

Dated, signed and delivered in open court at Meru this 4th day of June 2018.

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

Accused – present

Kimathi for accused - absent

F. GIKONYO

JUDGE