



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 30 OF 2018

REPUBLIC.....PROSECUTOR

Versus

BKB.....ACCUSED

RULING

Bail

[1] **B K B**, was arraigned before court on 2nd May 2018 for the offence of murder. He pleaded not guilty. The court ordered for pre bail report to be filed. According to the report, the people interviewed described the accused as a spoilt boy who took up truancy and later delinquent activities at his youthful age. His problem is compounded by mental related problems which could have been drug induced. He has been treated for his mental conditions but he gets occasional relapses. His father has been a victim of this behavior and has a big scar on his head. He has also been charged with arson in Criminal Case No 443/16 before Chief Magistrate Meru.

[2] The report went on to state that the community views him as a suspicious person and is feared due to his violent behavior especially when he is mentally unstable. The victim's family has a lot of bitterness and greatly suspects that the accused was involved in the murder herein although they feel that he did not act alone. They opposed the release on bond.

[3] The recommendation of the probation officer is that bond is not suitable option at the moment. Prior to this charge, the accused had just been released from custody upon being charged with arson. He has a history of mental sickness and gets violent when unwell and is feared by fellow villagers who strongly oppose his release on bail at the moment. Further, the area boda boda operators are alleged to be planning for a revenge for the murder of one of their own.

DETERMINATION

[4] **Article 49(1) (h)** of the Constitution provides for right to bail as follows:-

“An accused person has the right –

...

(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

[5] Are there compelling reasons not to release the accused on bond? What then is categorized as compelling reasons? The wisdom in the decision by **Chesoni J (as he was then) in NGANGA vs. REPUBLIC [1985] KLR 451** although it was before the Constitution of Kenya, 2010, provides for some of the factors which would constitute compelling reasons under new constitutional dispensation. See what he said below:-

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;

a) the accused will fail to turn up at the trial or to surrender to custody or;

b) the accused may commit further offences; or

c) he will obstruct the course of justice.

The primary purpose for bail is to secure the accused person's attendance to court to answer the charge at the specified time. I would therefore agree with Mr Karanja that the primary consideration before deciding whether or not to grant bail is whether the accused is likely to attend trial."

[6] Pre-bail report states that the accused was, prior to being charged with this offence, been charged with the offence of arson but the complaint was dropped by the complainant who was his grandfather. Further, the report observed that the persons interviewed stated that the accused is feared for his violence behavior especially when he is mentally unstable. In addition, there is an allegation that *boda boda* operators are baying for his blood since it is alleged that he murdered one of their own.

[7] These matters are serious and are relevant considerations in a bail application. The attendance of the accused during his trial is not guaranteed. His violent behavior is likely source of intimidation of witnesses. The family of the deceased has already expressed fear of him. His release would therefore prejudice the course of justice. In addition, his security cannot be guaranteed if released on bond. For those reasons, I am convinced that there are compelling reasons not to release the accused on bond. He will remain in custody during the pendency of this trial.

Dated, signed and delivered in open court at Meru this 19th day of July 2018

F. GIKONYO

JUDGE

In the presence of:

M/s. Mwathi for State

Mr. Kithinji advocate for Accused

Accused – present

F. GIKONYO

JUDGE