



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.36 OF 2018

REPUBLIC.....PROSECUTOR

Versus

JOSEPHAT MUNENE.....ACCUSED

RULING

Bail

[1] The accused person 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. On 2nd May 2018, the court directed that a pre-bail report be filed with 21 days for purposes of bail.

[2] According to a pre bail report filed in court on 4th June 2018, the accused person and his male siblings were said to operate in Maua town especially around Iriene area at night where they engaged in daily robberies and mugging of innocent and unsuspecting members of the public. The local community and all those interviewed were opposed to his release on bail. The community in Maua town seems to suggest that they are now at peace with current confinement as many criminal incidences that used to dominate the area before his arrest had since subsided. As would be naturally expected, the family members of the deceased person were strongly opposed to the issuance of bond to the accused person.

[3] Mr. Namiti for the state urged the court to consider the report which revealed embedded animosity between the accused and the community. He asked the court to deny bail.

[4] On the other hand, Mr. Thangicia for the accused person took a swipe at the report. He contended that the contents of the pre bail report seemed to be farfetched and biased, and had no basis whatsoever. He was of the view that the recommendations therein were merely sentimental and had no factual basis. Consequently, he urged the court to ignore the report which was full of hearsay.

DETERMINATION

[5] It is no longer the question whether or not an offence is bailable as, by dint of the Constitution of Kenya, 2010, all offences are bailable. An accused person is now entitled to be released on bond on reasonable conditions under Article 49 (1) (h) of the Constitution unless there are compelling reasons not to be released. Compelling reasons depend on the circumstances of each case. Except, however, instances that amount to compelling reason have been stated by court in a great number of cases now. I am however, content to tap into the wisdom in the decision by **Chesoni J (as he was then) in NGANGA vs. REPUBLIC [1985] KLR 451** which although decided before the Constitution of Kenya, 2010, provided for some of the factors that 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] The pre bail report painted the accused in very bad light and his male siblings who are said to operate in Maua town at night and engaged in daily muggings of innocent and unsuspecting members of the public. There is however no empirical evidence to support the conclusion that the entire community of Maua location was at peace and incidences of mugging and robberies subsided following his confinement. Save I do not think that the contents of the pre-bail report was complete hearsay as was stated by defence counsel. The report is based on interviews of real people who know the accused and their apprehensions that the accused may commit other offences is not unfounded or worthless. The conduct of the accused may interfere with the administration of justice. His attendance in court is also not guaranteed. Applying the test of the law, I am convinced that there are compelling reasons not to release the accused on bond. Accordingly the accused person shall remain in custody pending the hearing and determination of this case.

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

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F. GIKONYO

JUDGE

In the presence of:

Mr. Mwiti advocate for Mr. Munene advocate for accused.

M/s. Mwathi advocate for State

Accused – Kimeru – present

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F. GIKONYO

JUDGE