

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.1 OF 2017

REPUBLIC.....PROSECUTOR

Versus

AGNES MUROCHIA KAMUNYA.....1ST ACCUSED

PATRICK KINOTI KAMUNYA.....2ND ACCUSED

JEREMIAH KAILIKIA KAMUNYA.....3RD ACCUSED

PHENIAS KINYUA KAOME.....4TH ACCUSED

DAVID KINYUA MUGAMBI.....5TH ACCUSED

DOMICIANO KOBIA KITIBO.....6TH ACCUSED

RULING

Review of refusal of bail

[1] The accused persons are jointly charged with others not before court with murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya.

[2] By a Notice of Motion Application filed in court on 4th June 2018, the accused persons have sought to be admitted to bail/bond pending the hearing and determination of this case. The accused persons have contended that they jointly face murder charges, are family members and their siblings continue to suffer with no one to take care of them. Consequently, they asked the court to release them on bail/bond to enable them provide for their families. They further contended that they were willing to abide by all terms and conditions that may be imposed by court and that they would attend court when so required.

[3] When the matter came up for hearing on 2nd July 2018, Mr. Namiti for the State requested for 14 days to file a reply to the application. The court granted him 7 days. But, as at the time of writing this ruling, he had not done so. I am aware that this is the second application for bail by the accused persons. The first one was heard and their request for bail was declined by the court on 31st May 2017 for there was a compelling reason not to release the accused persons on bond to wit, there was a high chance of the accused persons being lynched by members of the community due to the high hostility among the members of the community at the time.

[4] The test to apply here is the one provided under Article 49 (1) (h) of the Constitution; whether there is compelling reason not to release the accused on bail. The reason for which bail was denied earlier will only be one of the factors to consider especially in discerning whether it still subsists as a compelling reason in the sense of the Constitution. There could be other compelling reasons apart from the earlier reason, or none exists at the moment. That is why I have difficulties in treating such applications strictly as a review application the way we know it.

[5] The foregoing notwithstanding, the State Counsel did not file a Replying Affidavit as had been promised. It thus falls on the court to apply the law on whether there is any irresistible and strong reason not to release the accused persons on bail.

[6] It is not lost on this court that a period of over one year has passed since the initial application for bail/bond was rejected by this court. Ordinarily, animosity or anger arising from the death of a person or kin in such heinous act would subside with time. In this case the court has not been shown of any special attribute or trait which suggests that the animosity or anger within the community still subsists or at the intensity which was evoked when the act was still fresh in their minds. And as I have stated, more than one year has passed by since bail was denied on the reason of hostility in the community and possibility of harm being inflicted upon the accused by the irate members of the community concerned. Tempers and anger that emitted from the act must have cooled down by now. Thus, in the absence of any evidence to the contrary, it is my considered view that there is no compelling reason not to release the accused persons on bail/bond on reasonable terms. Accordingly, I order that each accused person shall be released on a cash bail of Kshs. 100,000/= or a personal bond of Kshs. 200,000/= with one surety of similar amount. It is so ordered.

Dated, signed and delivered in open court at Meru this 18th day of September 2018.

F. GIKONYO

JUDGE

In the presence of:

Mr. Kiarie for State

Mr. Kaimenyi for all accused persons – absent

F. GIKONYO

JUDGE