

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 15 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PETERO MUNG'ATHIA MEME.....ACCUSED/APPLICANT

RULING

1. The Applicant is facing a Murder charge contrary to *section 203 as read with section 204 of the Penal Code Cap 63, Laws of Kenya*. It is alleged that on 10th February, 2017 at Akirang' Ondu location, in Igembe Central District within Meru County, he murdered Muthuri Mutia. He denied the charge when he took plea on 29th March, 2017.

2. The Applicant first applied for bail on 29th March, 2017. This was opposed by the prosecution. At the time, the Court called for a pre-bail report from the probation officer. A detailed pre-bail report was filed in court on 3rd May, 2017. The said reports revealed, inter alia, that he was a suspect to many criminal activities in the neighborhood and that he is a flight risk. Accordingly, the applicant was denied bail.

3. On 20th June, 2018, the applicant once again applied for bond orally. The Probation Officer was directed to prepare and file in court another pre-bail report. As at the time of writing this ruling, the pre-bail report has not been filed. In this regard, the court has to determine the said application on the basis of the material before it.

4. No doubt bail/bond is a constitutional right to every accused person. Under *Article 49 (h) of the Constitution*, bond is to be denied if there are **"compelling reasons not to be released"**. There is no definition of what compelling reasons are. These however, may include that the accused is a flight risk, that the security of the accused cannot be guaranteed, the likelihood of interfering with the prosecution witnesses *et al*.

5. In the present case, the accused was denied bond about a year ago. Amongst the reasons for such denial was that the accused was a suspect to many criminal activities in the neighbourhood. This was confirmed from the local administrators who said that the applicant has another pending criminal case before Maua Law Court where he is charged with the offence of injuring an animal. It was stated that the community is now at peace with his confinement. Further, all those who were interviewed except his father and uncle stated that he was a flight risk and was likely to disrespect the bond/bail conditions.

6. There is nothing on record to show that the situation has changed. However, the court gave both the prosecution and the probation office an opportunity to inform the court of these facts but both have failed to do so. The applicant is entitled to his liberty under Article 49 of the Constitution.

7. In the circumstances, there being no compelling reasons not to grant bond, I allow the application and order that the accused may be released on a personal bond of Kshs. 500,000/= with a surety of a similar amount.

SIGNED at Meru

A. MABEYA

JUDGE

DATED and DELIVERED at Meru this 11th day of October, 2018.

A. ONG'INJO

JUDGE