

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 39 OF 2018

THE REPUBLIC.....PROSECUTION COUNSEL

VERSUS

MATAYO MMBWANGA KINGIRI alias KOBU.....1ST ACCUSED

KENNEDY AYIGA ISUMBA alias KENOH.....2ND ACCUSED

RULING

1. Matayo MMBwanga Kingiri alias Kobu and Kennedy Ayiga Isumba alias Kenoh are charged with murder contrary to section 203 of the Penal Code, Cap 63, Laws of Kenya, as read with section 204 thereof. The particulars of the offence allege that on 13th day of July 2018 at Itegero Village, Itegero Sub-Location of Busali East Location, Sabatia Sub-County in Vihiga County, they murdered Cynthia Kageha. They all pleaded not guilty to the charge on 31st July 2018.

2. They applied, through Mr Musiega, their defence counsel, to be admitted to bail. The state did not objected to the release of the accused persons on bail, but asked the court to call for pre-bail reports before bail was considered. Whereupon the court ordered the Probation Department to file pre-bail reports on them. .

3. Pre-trial bail is a constitutional right available for all criminal offences by virtue of Article 49 of the Constitution of Kenya, 2010. The right is, however, not an absolute. It is available at the discretion of the court to be granted based on the circumstances of each case. Article 49 of the Constitution of Kenya, 2010, states that a court may admit an accused person on reasonable bail terms, and that bail may be denied where there exist compelling reasons. Section 123 of the Criminal Procedure Code Cap 175, Laws of Kenya, has similar provisions.

4. The principles for determining applications were set out in *Nganga vs. Republic* (1985) KLR 451 and *Mazrui vs. Republic* (1985) KLR 279. As a general principle, an accused person should be admitted to bail unless it is shown by the prosecution that there exist grounds for denying the same. The general principle is underpinned by the presumption of innocence. It will usually be denied where it is shown that (a) the accused will fail to turn up at his trial or to surrender to custody, or (b) the accused may commit further offences, or (c) he will obstruct the course of justice and (d) the accused would lose more by absconding. It will also be denied if it would not be favourable for the accused to go back to his own community without risk to his own life or limb.

5. The Probation Department complied with the directions mentioned in paragraph 2 here above, by filing the requisite reports, both dated 19th September 2018. I have perused through the said pre-bail reports. The reports are generally not favourable. The local community is said to be still hostile towards the accused persons after the events of 13th July 2018. It may not be safe, in the circumstances, for the accused to be released back to the community yet, for their own safety.

6. In view of the above, I shall not admit them to bail at this stage, I shall instead direct that they remain in remand custody. They may renew their application for bail after six (6) months.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 8TH DAY OCTOBER, 2018

W MUSYOKA

JUDGE