

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 38 OF 2018

THE REPUBLIC.....PROSECUTION COUNSEL

VERSUS

OMUKANDI BEN WAWIRE.....1ST ACCUSED

JONAH BARAZA.....2ND ACCUSED

ANTHONY WAFULA MUKAMBI.....3RD ACCUSED

RULING

1. Omukandi Ben Wawire, Jonah Baraza and Anthony Wafula Mukambi 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 6th July 2018 at Makhukhuni area, Kilumbeni Sub-Location of Kiliboti Location, Matete Sub-County in Kakamega County, the three accused murdered Vincent Okoti. They all pleaded not guilty to the charge on 31st July 2018.
2. They applied, through Mr Obilo, their defence counsel, to be admitted to bail. Whereupon the court ordered the Probation Department to file pre-bail reports on them. The state did not object to their release on bail.
3. Under of Article 49 of the Constitution of Kenya, 2010, pre-trial bail is a constitutional right available for all criminal offences. It is, however, not an absolute right. It is granted at the discretion of the court. 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 are compelling reasons. Section 123 of the Criminal Procedure Code cap 175, Laws of Kenya, carries similar provisions.
4. The courts have formulated principles for determining applications for bail in such cases as *Nganga vs. Republic* (1985) KLR 451 and *Mazrui vs. Republic* (1985) KLR 279. The general principle is that an accused person should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing 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. The general principle is underpinned by the presumption of innocence.
5. I have read through the pre-bail reports lodged herein on 2nd September 2018. The reports are generally not favourable. The local community is said to be still restive and hostile towards the accused persons after the incident of 6th July 2018. It may not be safe for them to be released back to the community yet, for their own sake.
6. In view of the above, I am reluctant to 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