



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KABARNET**  
**CRIMINAL CASE NO. 75 OF 2017**  
**REPUBLIC**  
**VERSUS**  
**MUSA KISUR KATURKANA**  
**LOMUTUNGULE YATTA**  
**DANIEL LOKITARY ALIAS DOKTA**  
**TITUS LONG'R TUWOT.....ACCUSED**

**RULING**

1. This a ruling on a bail application in the consolidated charge incorporating the accused in Criminal Case no. 75 of 2017 who is the first accused herein and the 3 accused persons in Criminal Case no 76 of 2017 as the 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> Accused persons herein.
2. The Accused in criminal case no. 76 of 2017 have been out on bond in the sum of Ksh. 500,000/-with two sureties of the same amount each. A reconsideration of the 1<sup>st</sup> accused bail application had been deferred awaiting a Probation Officer's pre-bail report on the situation and circumstances on the ground.
3. Counsel for the accused -Mr. Kemboi for the 1<sup>st</sup> and 3<sup>rd</sup> Accused and Mr. Mangeri for the 2<sup>nd</sup> and 4<sup>th</sup> accused - pray for bail in the same terms as hitherto existing for the accused 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> accused urging that the accused had faithfully kept the terms of their bail and attended court without fail on all court appearances.
4. In opposing bail for the accused person, Counsel for the DPP, Ms. Kenei, abandoned all the grounds in opposition to bail set out in the Affidavit of Cpl. Dekow NUNO of 6<sup>th</sup> April 2017 save Ground No. 9 which is in terms that:

***“9. That the families of the deceased are still at pains trying to comprehend what happened. This incident was widely covered by the media. I pray that the accused be detained not to undermine or disturb the public order and or peace as, if he is released, this would lead to public disturbance.”***

5. In a previous ruling on the 1<sup>st</sup> accused's bail application dated 12<sup>th</sup> April 2017 herein, this court acknowledge public interest in law and order and peace as sufficient grounds for demonstrating compelling reason for denial of bail, and accordingly ordered a situational report by the Probation Department.

6. Ms. Adomeyon for the victims' families urged the court to deny the accused bail as the said families were still at pains and the objected to the release of the accused on bail,

7. The reports of the Probation Officer in Criminal Cases Nos. 75 and 76 of 2017 both agree that the volatility of the situation of the ground had ceased:

**Report of Probation Officer Julius K. Limo dated 26<sup>th</sup> April 2017 in Cri. Case No. 75 of 2017**

*“Conclusion*

*Your Honour before the Court is a 41 year old man with a family who depend on him. He denies the charge and pleads with the court to grant him a chance to have his case heard when he is out on bond.. He has fixed abode and the sister who is permanently employed by TSC is willing to stand as his surety. The local administration and religious leaders claim there would be no public disturbance if the accused is granted bail.”*

**Reports on all the three Accused in Cri. Case No. 76 of 2017 of Probation Officer Julius K. Limo dated 2<sup>nd</sup> May 2017** concluded that *“the findings from social inquiry reveals there is no hostility in the ground and members of the public have no objection”* to accused being released on bail.

8. On the basis of the reports filed by the probation officers which are shown to have taken into account the positions of the various local administration that there was no threat to security or likelihood of disturbance to peace, I find that the public interest to law and order and peace as a reason for denial of bail is no longer relevant to the present applications. With sympathy for the families of the deceased victims, the accused must be taken as innocent until proved guilty and are accordingly entitled to bail in accordance with Article 49 of the Constitution. To deny the accused bail because of the pain and loss no doubt felt by the families of the victims is to punish the accused in advance of their conviction for the murders the subject of the charge.

9. The likelihood of disturbance of peace has been confirmed as non-existent and pain and loss of the victim's families is always an incidence of murder or other crime on the person, and cannot *per se* be a justification for denial of bail. Being the only reasons advance by the DPP for denial of bail, the Court finds no compelling reason to deny the accused persons constitutional right to bail.

10. Accordingly, the Accused will be released on bail pending trial on terms as hereunder:

1. The 1<sup>st</sup> Accused will execute a bond in the sum of Ksh.500,000/- with two (2) sureties of the same amount each.

2. The Accused Nos. 2, 3, and 4 will remain on the bond terms of Ksh.500,000/- with two (2) sureties already executed herein before.

3. The matter will be mention before the Deputy Registrar or the Court every 30 days pending hearing and determination.

11. Order accordingly.

**DATED AND DELIVERED THIS 2<sup>ND</sup> DAY OF MAY 2017.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Kemboi for the 1<sup>st</sup> and 3<sup>rd</sup> Accused

Mt. Mang'eri for the 2<sup>nd</sup> and 4<sup>th</sup> Accused

Ms. Kenei for the DPP.