

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO.15 OF 2013

ELIJAH KASURU MUTAHI

ANTONY HINGA MAINA.....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicants were both charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. An application is before this court whereby both accused through their Learned Counsel Mr. A.K.Kariuki have applied to be released on bail pending the hearing of the murder case; they submit that the offence is bailable under the provisions of Article 49 of the Constitution 2010; and that they are entitled to bail on reasonable terms; so long as there are no compelling reasons to deny them this right.
3. The Prosecuting Counsel for the State Ms Gicheha opposes the application and seeks to rely on the Replying Affidavit made by the Investigating Officer IP DANIEL NZIOKA; therein he outlines several reasons for denying the accused admission to bail; one of the reasons being that the 2nd Accused went into hiding for a period of six (6) months; that upon his return to Gathugu Village he was arrested by angry members of the public who were in the process of administering mob justice on him and would have burnt him to death had the police not intervened by rescuing him; that the police officers had to use a lot of force to fight off the angry members of the public in their endeavour to rescue the 2nd accused;
4. That the situation on the ground was still volatile as at that time and the community had not completely healed from the murder of the deceased; that if released there is a likelihood that they may be attacked and killed by the members of public;
5. Having given due consideration of the application before this court and having noted that with the advent of the new Constitution 2010 times have changed and that although the accused have been charged with a capital offence of murder which carries a mandatory death sentence; the offence is indeed bailable;
6. The above notwithstanding the right to bail has limitations and the same may be denied if there are compelling reasons; the Investigating Officer has tendered such reasons in his Replying Affidavit and has deponed that he is apprehensive that due to the temperatures on the ground there was a likelihood that if released the accused may not be assured of their safety and their lives would be endangered.
7. This court is satisfied that there exist compelling reasons in support of the accused's continued detention and denial of bail; the reasons are as stated above;
8. But all is not lost this court shall direct the Probation Office to prepare a pre-bail report as the hearing continues and the accused persons are at liberty to revisit their application for admission to bail.
9. For those reasons the application for bail is found not to be merited at this juncture and is disallowed;

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 13th day of July, 2017.

HON.A.MSHILA

JUDGE