



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.62 OF 2013

PETER MUGAMBI PATRICK.....APPLICANT

VS

REPUBLIC.....RESPONDENT

RULING

The applicant is charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code CAP 63 of the Laws of Kenya. By a Notice of Motion Application brought pursuant to Article 49 (1) (h) of the Constitution of Kenya, the applicant has sought to be released on bail/bond pending trial.

The gist of the application is that that the accused person has a Constitutional right to be released on bail/bond; and that he is willing to strictly adhere to all the terms and conditions that may be set by the court for his release.

The application was opposed. Mr. Mulochi, Counsel for the State, in opposing the application sought to rely on an affidavit sworn by IP Muturi the investigations officer. He deposed *inter alia* that the accused person murdered his own mother; that key witnesses are his siblings one of them a minor, and that if released on bond, the accused person is likely to interfere with the said witnesses thus undermining the prosecution's case. It was further contended that the accused person had no fixed abode.

The accused person via further affidavit filed in court on 8th December 2015 countered the prosecution's assertions and deposed that the allegation that he may interfere with witnesses was unfounded and merely speculative; that he has a fixed abode within Kithurune area where he used to carry out farming activities.

Before the court considered this application it asked for pre-bail report. According to the pre-bail report filed in court on 10th February 2016.

This is a second application for bond, the 1st one having been rejected by Lesiit J on 20th March 2014 noting *inter alia* the close relationship between the victim, the accused and witnesses and the fact that the incident had recently occurred and that the witnesses would feel intimidated.

I have considered this application, submissions by counsel and the pre bail report and the further supporting affidavit sworn by the accused.

Bond is a Constitutional right but the said right is not absolute because if there are compelling reasons, bond will not be granted. Principles to be considered in an application for bond are:

- 1. Whether the accused will turn up for his trial.**
- 2. The seriousness of the charge.**
- 3. Character and antecedents of the accused person.**
- 4. Whether the security of the accused will be guaranteed if released.**
- 5. Special circumstances of each case.**

According to the social enquiry, accused related well with community members though this was countered by his relatives who alleged that he was troublesome and that he had assaulted his cousin with a knife after which he disappeared for close to 2 years. His own siblings and relatives are of the opinion that he was better off in remand as they are apprehensive that he may harm them or his life be in danger as the community members may avenge the death of their own. The area assistant chief stated that the accused has been naughty and that there were a number of incidents in which the accused person had harmed a number of people after which he would relocate to unknown places to avoid arrest. **None of his siblings is willing to bail him out even if he was granted affordable bond terms as they were still bitter about the incident .**

In the instant case the accused person murdered his own mother. None of his siblings is willing to stand surety for him even if he was released on reasonable terms. His character is in question. The allegation that he has no fixed abode was confirmed in the pre-bail report as it was said that the accused person had changed residences 3 times as follows: Mutuate for 2 years, Nanyuki and Muthaara for about 10 years before finally returning home in 2011. In my view, he is a flight risk.

In view of the foregoing, I am satisfied that there are enough compelling reasons to deny accused bond. I decline to grant the applicant bail/bond and he will remain in custody pending his trial.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF FEBRUARY, 2016.

R.P.V. WENDOH

JUDGE

11/2/2016

PRESENT

Mr. Kariuki for State

Mr. Otieno for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused