



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 45 of 2015

KENNETH MUTHOMI MBAYA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The accused person 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 dated 16th December 2015, the Applicant seeks to be released on bond/bail pending the hearing and determination of this case.

The gist of the application is that the accused person is a Kenyan citizen who has at all material times resided in Kenya and that he is not a flight risk.

The application was opposed. Mr. Mulochi for the State in opposing the application sought to rely on an affidavit sworn by Corporal Taracisio Wahome, the investigations officer in this case. The Investigation Officer deposed *inter alia* that the memories of the deceased person's cruel death at the hands of the accused person by inflicting multiple cuts and inserting a panga in the deceased person's private parts was still fresh in the minds of the deceased person's family; that the family needs time to heal. He further contends that the witnesses are well known to the accused person and there is the possibility of the accused person interfering with the witnesses; that the accused person went into hiding after committing the offence and that was arrested three months later at the deceased's father's home.

Before the court considered this application, it requested for a pre-bail report. According to the pre-bail report filed in court on 7th March 2015, the accused person was said to be a social person who freely mingled with people and had no known enemies. The victim's family stated that the accused person presented himself to them a few days after the incident and requested that they organize for his arrest since he could no longer stay away from his home area for fear of being seen as the culprit yet he was innocent. The victims family was indifferent towards the accused being granted bail or not and stated that while he could be granted bail, the probability of him going to the deceased's home were still very high since he cohabited and lived with the deceased at her maternal home seldom going to his home. They further opined that being a drunkard, he could easily differ with the brothers of the deceased who were also drunkards.

With regard to the community attitude, the area manager stated that he knew the accused person since

childhood throughout his school life as a person who was social, respectful and had no criminal record. The area chief stated that he saw no threats to the life of the accused but advised that he should avoid wondering into the area of the deceased's family.

I have considered this application, submissions by counsel and the pre bail report. Chesoni J (as he then was) in the case of *Ng'ang'a v Rep 1985 KLR 451* enunciated the principles to be considered by the court in deciding whether to released an accused person on bail/bond as inter alia as follows:

- 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.**

The Constitution does not define what compelling reasons are and each case will depend on its own special circumstances.

Even though the investigations officer deposed that the accused person went into hiding immediately after the commission of this offence, the probation officer stated in his report that the accused person presented himself to the family of the deceased so that they could organize for his arrest as he feared for his safety.

Considering all the circumstances in this case, and in view of the fact the pre-bail report was favourable of the accused person being released on bond, I find that there are no compelling reasons to deny the accused person bail.

In the circumstances, I grant the accused person a bond of Kshs.300,000/= with a surety of similar amount. Alternatively, the accused person may be released on a cash bail of Kshs.100,000/=. The accused person is warned to desist from going to the deceased's home or interfering with prosecution witnesses failure of which his bond shall stand cancelled.

DATED, SIGNED AND DELIVERED THIS 13TH DAY APRIL, 2016.

R.P.V. WENDOH

JUDGE

13/4/2016

PRESENT

Mr. Mulochi for State

Mr. Kiogora for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused