



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.2 OF 2016

REPUBLIC..... PRESECUTOR

VERSUS

EDWARD GUANTAI ALIAS MBONKE.....ACCUSED

RULING

Edward Guantai, is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He has filed an application dated 8/2/2016 seeking to be released on bond. The application is supported by his affidavit dated 8/2/2016 and further affidavit dated 18/3/2016 and another affidavit sworn by his mother Agnes Kinya, dated 18/3/2016. He deposed that this case is likely to take a considerable period of time before it is heard and he is ready and willing to abide by any bond terms that the court may impose.

The application was opposed and CPL Ondieki the Investigating Officer, swore an affidavit; deposed that accused is a flight risk because he went underground from 2/12/2015 till 28/12/2015; that his accomplice is still at large and they may conspire to interfere with witnesses and lastly that accused's mother has threatened one of the witnesses, Samson Mureithi and a report was made to the Police Station under OB No. 24/04/03/2016. Samson Mureithi also filed an affidavit dated 8/3/2016 in which he deposed that on 10/1/2016, accused's mother threatened him that should the accused be released on bond, his family would be forced to relocate; that he delayed in reporting but the mother has continued to threaten him prompting him to make a report to the Police Station.

In reply to the said affidavits, the accused has questioned why the witness did not report the alleged threats in January 2016; that the reportee never mentioned the dates when the threats were made and that in any event, his mother's name is not Ntinyari but **Agnes Kinya**.

Agnes Kinya has also sworn an affidavit in reply and denied making any threats to the accused and denied that she is known as Ntinyari but Agnes Kinya. She attached her national identity card.

I have considered the rival affidavits and arguments together with the pre-bail report filed herein.

Accused is still presumed innocent till proved otherwise. The case is still fresh and accused is a mere suspect. That is why he has a right to bail but that right is not absolute. If there are compelling reasons which can warrant accused to be denied that right, bail will be denied.

The principles the court needs to consider in such an application are inter alia:

- 1. Whether the accused will attend the trial if released on bond;**
- 2. Whether accused will interfere with witnesses;**
- 3. Accused's character and antecedents;**
- 4. Whether accused's safety will be guaranteed;**
- 5. The nature of the prosecution sentence.**

In the case of ***Rep v Danson Mgunya and Kassim Sheebwana Mohammed, KLR Mbsa CRC 26/2008***, the court exhaustively dealt with the arrest of the robbers to be considered before grant of bail.

I have considered the allegation that the accused and his accomplice who is still at large are issuing threats to witnesses. I find the allegation by Samson Mureithi questionable because despite the allegation that the threats had been made in January 2016, he did not make any report to Police till 14/3/2016. However, the alleged threats are also alluded to in the pre-bail report. The court cannot just wish the allegations away.

In the pre-bail report, accused's character is painted in every negative manner. He is said to be an idler, drunkard and involved in petty crime. That has not been disputed.

As to the allegation that accused went underground after the death of the deceased, that is not supported by any evidence. I have perused the witness statements on record and that is not the correct position.

The offence was allegedly committed in December, 2015 about 4 months ago now. There is no evidence that even after accused was known to be a suspect, any threats to his life were made to him by members of the community. I find there to be no real threats to accused's life.

Generally, the pre-bail report is negative towards accused's release on bond. It is said that his presence in the community is likely to intimidate the witnesses because of the threats. The report also reveals that even his own siblings are not willing to stand surety for him because of his character and likelihood of him absconding. Coupled with accused's character, this court is of the view that these are compelling reasons to deny accused bond. The court directs that accused do remain in remand pending hearing of his case.

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

R.P.V. WENDOH

JUDGE

13/4/2016

PRESENT

Mr. Ntarangwi for Accused

Mr. Mulochi for State

Ibrahim/Peninah, Court Assistants

Present, Accused