



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.60 OF 2015

STANELY MUGAMBI NKUNJA..... 1ST ACCUSED

JOSEPH KIMATHI KAMURU.....2ND ACCUSED

EZEKIEL NTONGAI RWATA.....3RD ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING

The three accused persons are 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 18/1/2016 brought pursuant to **Article 49 (1) (h) of the Constitution of Kenya**, the accused persons have sought to be released on bail/bond pending the hearing and determination of this case.

The applicants content that they have a Constitutional right to bail/bond pending the hearing and determination of this suit.

The application was opposed by Mr. Mulochi, Counsel for the State who relied on an affidavit sworn by Chief Inspector Bashir Ali, the investigations officer. He deposed that the accused persons committed the offence fairly recently; that the local community was still very angry with the accused persons and that the most key prosecution witness was a very vulnerable lady well known to the accused persons being a neighbor; that if released on bail, they will interfere with witnesses thus ruining the prosecution's case.

Before the court considered this application, it asked for pre-bail reports in respect of the accused persons. According to the pre-bail reports filed in court on 6th April 2016, the same were positive in respect of the 1st and 3rd accused where it was stated that the accused persons conduct was good; that the accused persons have never been in conflict with the law; that the members of the community and local administration were welcome to the idea of the accused persons possible release on bond since the accused persons led a legitimate lifestyle; that they are not a threat to any member of the community. The deceased's family members however reportedly refused to be interviewed directly by the probation officer had told the area chief that they were opposed to the release of the accused persons on bail.

With regard to the 2nd accused however, the pre bail report depicted him in very bad light; that he is a

member of a gang linked to various criminal activities such as muggings and violent robberies in the local villages; that he has a pending criminal case at Maua law courts. The entire community of Nathu location was said to be opposed to his release on bail/bond with the argument being that everybody was now at peace with his current confinement.

I have considered this application, submissions by counsel and the pre bail reports. The principles which the court considers in an application for bond are inter alia;

1. **Whether the accused will turn up for his trial;**
2. **The seriousness of the charge;**
3. **Whether the accused will interfere with witnesses;**
4. **Character and antecedents of the accused person;**
5. **Whether the security of the accused will be guaranteed if released.**

With regard to the 1st and 3rd accused, the pre bail reports were favourable to them being released on bond as there were no serious objections to their release on bond. With regard to the 2nd accused, he was depicted in very bad light and his character is in question. He is said to have a pending case at Maua – CRC 1118/2014 and that he is a known criminal in the area. All the allegations against accused 2 remained uncontroverted.

In the end, I find that there are no compelling reasons as to why accused 1 and 3 should not be released on bail/bond.

Consequently, they may be released on a **bond of KShs.200,000/= with a surety of a similar amount or in the alternative, cash bail of KShs.75,000/=.**

With regard to the 2nd accused, I find that there are compelling reasons to deny him bond and his **application for bail/bond is hereby rejected in its entirety.** The 2nd accused person shall remain in custody pending the hearing and determination of this case.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF MAY, 2016.

R.P.V. WENDOH

JUDGE

12/5/2016

PRESENT

Mr. Mulochi for State

Mr. Gitonga for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused