



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NUMBER 61 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MUTWIRI KUBAI.....ACCUSED 1

JOTHAM MUTWIRI M'ITIMITU ACCUSED 2

ERICH KINYUA ACCUSED 3

RULING

The three accused persons – **James Mutwiri Kubai, Jotham Mutwiri M'Itimitu** and **Erick Kinyua alias Japhet Mutwiri alias Murangiri** are jointly charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. They have filed separate Notion of Motion applications seeking to be released on bond pending the hearing of their case.

The 1st accused who was represented by Ms. Nelima urged that he has a Constitutional right to bond being presumed innocent till proved guilty; that he has a fixed place of abode and is ready to attend court as will be required of him.

Jotham Mutwiri, the 2nd accused was represented by Mr. Mutegi and urged that he has a right to bond; that he is presumed innocent till proved otherwise; that there are no known compelling reasons to deny him bond and is ready to attend court as will be required of him.

Accused 3, who was represented by Mr. Muthomi relied on similar grounds as those relied on by Accused 1 and 2.

The application was opposed by PC Brian Nzioki, the Investigations Officer who deponed that the accused's accomplices were still at large; that one Murangiri, a key suspect had gone into hiding in Elwak in Wajir and that the accused are likely to interfere with witnesses.

The court has considered all the affidavits on record and the pre-bail reports filed in respect of each accused.

The cardinal consideration in an application for bond is whether the accused will turn up for his trial.

Other considerations are whether the accused will interfere with witnesses; whether the accused's safety will be guaranteed and his past character.

Although it was alleged that the accused are likely to interfere with witnesses, the prosecution did not avail any evidence to support that allegation. The prosecution also contended that an accomplice, one Murangiri was still at large but by the time this application was heard, Erick Kinyua alias Murangiri (accused 3) had been arrested and their fear has therefore, disappeared.

I have considered the pre- bail reports. All of them are favourable to the release of the accused. Save for the brother of the deceased objecting to the release on bond, the community and administration do not seem to have any objection to accused being granted bond. For all the above reasons, the prosecution has failed to demonstrate that there are any compelling reasons that would warrant accused to be denied bond. I grant the application as follows:

1. Each accused may be released on **Cash bail of KShs.70,000/= or bond of KShs.200,000/= plus one surely of a similar amount.**

DATED, SIGNED AND DELIVERED THIS 19TH JULY, 2016.

R.P.V. WENDOH

JUDGE

19/7/2016

PRESENT

Mr. Mulochi for State

Mr. Mutegi 2nd Accused

Ms. Nelima Holding Brief for Mr. Muthomi for 1st and 3rd Accused

Ibrahim/Peninah, Court Assistant

All 3 Accused, Present