



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 85 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

M'MBURA MWITHALIE.....1ST ACCUSED

ALICE KATHAMBI.....2ND ACCUSED

PETER MUGAMBI.....3RD ACCUSED

RULING

By the Notice of Motion dated 28/7/2016 brought pursuant to **Article 49(1) (h) of the Constitution**, the three accused, M'Mbura Mwithalie, Alice Kathambi and Peter Mugambi seek to be released on bond pending the hearing of this case where they are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The application was supported by an affidavit sworn by Peter Mugambi, the 2nd accused on behalf of all the three accused. He deponed that they are all Kenyan citizens who come from Kathelwa village, have fixed places of abode and are not a flight risk; that they have no past criminal records and are ready to abide by any conditions that the court may impose and will attend court as will be required of them.

The application for bond was opposed and the Investigations Officer, IP Antony Khamala, swore an affidavit in which he stated that after the alleged murder, the accused were nearly lynched by the members of public were it not for the Police intervention; that all the prosecution witnesses are neighbours to the accused persons and that there is a high likelihood of interfering with them if released on bond.

The court also called for pre-bail reports which have been filed. I have considered the affidavits together with the pre-bail reports.

The primary consideration in an application for bond is whether the accused will turn up for his trial. Other considerations include, whether the accused will interfere with witnesses; whether the accused's security is guaranteed and the accused's past conduct or antecedents.

In this case, the pre-bail reports paint a very negative picture of all the accused. The accused 1 is said to be a common criminal in the community; that the scars on his body are a result of beatings after theft he has committed and that he was nearly lynched were it not for the Police.

Similarly, Accused 2 is said to associate with criminals in the area, irresponsible in that she abandoned one of her children who had to be taken to a children's home.

Likewise, Accused 3 is said to be a common criminal in the locality and nobody is willing to stand surety for him.

Though the prosecution has not produced any previous criminal records in respect of the accused, the members of the community and local administration will usually know the conduct of its members. In respect of Accused 1, it was said that the scars on his body have been secured because of being beaten after theft of *miraa*.

If indeed the accused are common criminals, then the witnesses will feel intimidated by their very presence in the community. Besides, the reports indicate that the society is not yet ready to have the accused and are likely to suffer from revenge attacks if released.

For all the above reasons, I am convinced that the accused may be flight risks and their security may not be guaranteed if released on bond.

In the end, I find that there are compelling reasons to deny the accused persons bond. I dismiss the application. They will remain in remand pending trial.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF NOVEMBER, 2016.

R.P.V. WENDOH

JUDGE

7/11/2016

PRESENT

Mr. Mulochi for State

Mr. Igweta for Accused

Ibrahim/Peninah, Court Assistants

Acused, all present