



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NUMBER 22 OF 2016

SAMSON MITHIKA ALIAS KABOI... 1ST APPLICANT

DORINE MUKIRI ANAMPIU 2ND APPLICANT

PENINAH KAIGONGI ANAMPIU 3RD APPLICANT

SILAS GIKUNDI 4TH APPLICANT

VERSUS

REPUBLIC.....APPLICANT

RULING

The accused persons are charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya.**

By Notice of Motion applications filed in court on 28th July 2016, brought pursuant to Article 49 (1) (h) of the Constitution, the accused persons have sought to be released on bail/bond pending the hearing and determination of this case.

The gist of the applications is that the accused persons will not interfere with witnesses; that they are not in danger of reprisals from the community; that they have fixed places of abode; and that they are ready to abide by any terms or conditions which the honourable court may impose.

The applications were opposed by Mr. Mulochi, Learned Counsel for the State who sought to rely on an affidavit sworn by **PC Isaac Ongondo**, the Investigations Officer in this case, who deposed that there was still much hostility on the ground and that should the accused persons be released on bail, their lives would be at great peril. The 2nd affidavit was sworn by the Chief of Anjuki Location Michuki Jacob, who swore an affidavit to the same effect. The Investigations Officer also deposed that all the prosecution witnesses hail from the same locality and that the accused persons may interfere with them.

The court called for pre-bail reports in respect of the accused persons. According to the pre-bail reports filed in court on 31st October 2016, the same were in favour of the release of the 2nd and 4th accused persons but not for the 1st and 3rd accused persons. It was alleged that the 1st accused has been engaged in social evils although he has never been caught. As for accused 2, the report discloses that she has been away in school and the deceased's wife does not ever know if she was linked to the offence. As for the

3rd applicant, she is said to have been at the centre of this crime as the deceased's family believed that the deceased met his death in a love triangle.

The 4th accused was depicted as a good person who has not been involved in any criminal acts and unlikely to abscond or pose any threat to the witness.

I have considered these applications, submissions by counsel and the pre-bail reports. 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 a 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.**

Despite the fact that the Chief of the Area deponed that the community is still angry, the reports in respect of accused 2 and 4 are favourable to their release on bond. I believe he is the same person who was interviewed by the Probation Officer. The reports also indicate that the accused live far away from where the deceased hailed from so that if the community is still riled by the death, they are unlikely to come into contact with the said citizens.

As regard accused 2, the deceased's wife did not even know if she was involved. She lived away from home and had come home for holiday. In my view, accused 2 and 4 would not be subject of any reprisals from the community. The Chief should have clarified exactly which of the accused was under threat of revenge from the community.

The pre-bail report in respect of accused 1 is that he is suspected to be involved in criminal activities in the area though he has never been caught. The Chief is said to have confirmed that fact. The same Chief swore an affidavit but never alluded to the character of the accused.

For accused 3, she is said to be a key suspect having been in a love triangle. That is why she is a suspect. Accused 3 is sister to accused 2. The key consideration in this application is that the accused attend court for their trial. The fact that there is a distance between the accused's homes and that of deceased means that they may not be easily be exposed to revenge. They have a duty of are to themselves too.

Having considered all the above, the accused have a duty to take care of their own security too and I do not find any serious compelling reason to deny the accused persons bond. I allow the application and order that accused 2 and 4 may be released on bond of **Kshs. 200,000/= each plus one surety of like sum or cash bail of KShs.50,000/= each.** Accused 1 and 3 may be released on **bond of KShs.250,000/= plus one surety of like sum or cash bail of Kshs.70,000 each.**

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF NOVEMBER, 2016.

R.P.V. WENDOH

JUDGE

15/11/2016

PRESENT

Mr Mulochi for State

Mr. Otieno Holding Brief for Mr. Nyauchi for Accused

Ibrahim/Peninah, Cour Assistants

All 4 Present, Accused