



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 30 OF 2013**

**WENDOHO, J**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**EDWARD MUINDI NDERI.....)1<sup>ST</sup> ACCUSED**

**GERALD MUTENGI NDATHO.....)2<sup>ND</sup> ACCUSED**

**JOEL MURIMI NDATHO.....)3<sup>RD</sup> ACCUSED**

**JUDGMENT.**

The three applicants filed the Notice of Motion dated 26.9.2010 seeking to be released on bond pending hearing of this case. In support of the application, they deponed that they had earlier applied for bond but the court directed that the emotions were still high in the community and they should make the duplication later; that they have a right to bond by dint of article 49(1) (h); that they have fixed places of abode; that they will attend court as will be required of them; that they have no intention of absconding and their families are ready and willing to stand surety for them. It is also deponed that the 3<sup>rd</sup> applicant suffers from hemorrhoids that need surgery and is suffering in remand. The court had asked for pre bail reports which were prepared by the Probation Officer in 2013. The officer was of the view that there was still tension at the applicant's home because from the victims' relatives were still very bitter with the applicants. It was also noted in the report that 1<sup>st</sup> applicant had recently moved to the area and the people could not vouch that he would attend court if released on bond.

The application was opposed and PC Raphael Nzioka filed a replying affidavit dated 11.12.2014 in which he deposed inter alia, that the accused persons are likely to interfere with witnesses; that their lives may be in danger as alluded to by the probation officer and that the court having declined to grant similar orders before, the same should be dismissed.

I have considered the submissions by both counsel and the affidavits on record. The prime consideration in an application for bond is whether the accused person will turn up for the trial or is he a flight risk.

The offence herein was committed in March 2013 which is about 2 years ago. The probation officer's reports were made in the same year, about 6 months after the offence was committed and I believe the incident was still fresh in the minds of the victims' relatives and that is why the officer indicated that the applicant's lives may have been in danger in the event they were released on bond. It is now about 2

years since the offence was committed. The emotions of the victim's families must have cooled. I have seen the Probation Officers reports and apart from the 1<sup>st</sup> applicant, the members of the community had no objection to the 2<sup>nd</sup> and 3<sup>rd</sup> applicants release on bond.

As to the allegation that the applicants are likely to interfere with witnesses. Firstly I have looked at committal bundles and the key witnesses are family members of the deceased and the state has not led any evidence to demonstrate that the applicants are likely to interfere with them.

For the 3<sup>rd</sup> applicant, he is said to have hemorrhoids which are causing him a lot of discomfort in remand because of poor diet but no medical report was exhibited.

Whereas release on bond is an accused person's constitutional right, the said right is not absolute. The court will not grant an accused bond if there are compelling reasons to deny it. In the instant case, I find that there are no compelling reasons to deny the accused bond. The earlier fear of them being lynched by the victim's family must have subsided.

As regards accused 1 though the community was hesitant that he be released on bond for lack of fixed abode yet his parents were ready to stand surety for him and if it was said his wife had gone back where his parents lived and there must be a home there.

In the end, I find that there are no compelling reasons to warrant me deny accused persons bond and I hereby grant them bond in the following terms;

1. **Each accused may be released on cash bail of Ksh.50,000/-**
2. **In addition, each accused to provide a surety of Ksh.350,000/-**
3. **Each accused person do report to Gatunga Police Station once a month until further orders of this court.**
4. **Each accused person be of good conduct during the pendency of this case in default the bond will be cancelled.**

**DATED AT MERU THIS 6TH DAY OF FEBRUARY 2015.**

**R. P. V. WENDOH**

**JUDGE.**

.....**For accused**

.....**For State**

.....**Court Assistant**

.....**Accused.**