



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO.80 OF 2014
JEREMY MURUNGI MURITHI.....ACCUSED
VS
REPUBLIC.....RESPONDENT

RULING

By a Notice of Motion Application dated 27th January 2015, the accused person has sought to be released on bail/bond pending the hearing and determination of this case.

The accused person was on 10th November 2014, charged with the offence of murder whereupon he pleaded not guilty and subsequently thereafter was detained at Meru prison and that since then he has not enjoyed the right to liberty. The applicant further contended that he has a unqualified constitutional right to be released on bail/bond on reasonable conditions and that he is not aware of any compelling reason within the meaning of Article 49 (1) (h) of the constitution of Kenya, 2010, as to why he should not be released on bail/bond.

The application was opposed. Mr. Kariuki, Learned State Counsel, contended that the accused person and the witnesses come from the same area and that there was a likelihood of the accused person interfering with prosecution witnesses if released on bond. He further contended that the offence was committed recently and that there was need to give the deceased's family time to heal and that even though the offence was bailable, the same was at the discretion of the court.

Before the court considered this application, the court called for a pre bail report. The same was filed in court on 18th March 2015. According to the report, it was difficult to assess the deceased's family members since it was alleged that they kept making excuses on why they were not home during the two field visits and also as to why they should not avail themselves. The only family member available was the deceased's 6th born who was very bitter from the outset probably because the incident was still very fresh in his mind.

With regard to the community attitude, it was contended by the probation officer that the area chief of the locality had handled several cases and disputes between the accused family, deceased family and a Mr. Mwebia (a close neighbor whose land is between that of the accused and the deceased) for close to 10 years. The area chief further stated that there was a grudge between the two families and chances of retaliatory attacks taking place were very high if the accused was released on bond. There were mixed feelings on the ground where some of the community members including the area assistant chief felt that there could be some retaliation towards the accused if he happened to show up in the area since the

incident was still very fresh in the minds of the deceased's sons.

I have considered this application, submissions by counsel, and the pre bail report. Even though an arrested person has a Constitutional right to bail/bond pursuant to Article 49 (1) (h) of the Constitution, the said right is not absolute since the same provision states that an arrested person shall not be released if there are compelling reasons. Though the constitution does not define what compelling reasons are, each case would depend on its own circumstances.

From the circumstances of this case the offence was committed on 12th October 2014 which is slightly over seven months ago. The incident must be fairly fresh in the minds of the deceased's family and they certainly need some time to heal. Even though it was contended by Mr. Kariuki that there was a likelihood of the accused persons interfering with the prosecution witnesses, I was unable to ascertain the same since copies of witness statements had not been availed.

In my opinion and bearing in mind that the incident was fairly recent and still very fresh in the minds of the deceased family and in light of the alleged grudge that has existed between the accused and the deceased's family for close 10 years now, retaliatory attacks cannot be ruled out and I believe these are compelling reasons not to grant the accused person on bond/bail at this stage. Accordingly, bond is denied. Accused to remain in remand till the case is heard and determined.

DATED SIGNED AND DELIVERED THIS 8TH MAY, 2015

R.V.P. WENDOH

JUDGE

Present:

R. Wendoh J.

Mr. Mulochi for State

Mr. Wamache Holding Brief for Mr. Kiogora for Accused

Faith, Court Assistant

Accused, Present