



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 7 OF 2014

REPUBLIC..... RESPONDENT

V E R S U S

JAPHET KOBIA ALIAS KARWAMBA.....1ST ACCUSED

JAMES KIUNGA 2ND ACCUSED

GODFREY KARAURI 3RD ACCUSED

SIMON MUTUA MUNORU 4TH ACCUSED

RULING

The four accused, **Japhet Kobia alia Karwamba, James Kiunga Ntoithilai, Godfrey Karauri Kariti** and **Simon Mutua Munoru** are jointly charged with the murder of **Joseph Muthamia** on 24/1/2014.

On 20/1/2015, Mr. Igweta, Counsel for Accused 1-3 filed an application seeking to have the three Accused released on bond. The grounds are found on the face of the application and an affidavit sworn by Mr. Igweta. Mr. Murithi, Counsel for Accused had earlier filed an application dated 27/11/2014 seeking to be released on bond too and the grounds upon which it is premised are found on the face of the application and the supporting affidavit of the 4th Accused.

Generally, the Accused urged the court that they will turn up for trial if released on bond; that the situation on the ground is now calm and there is no likelihood of revenge on the Accused persons and that the allegation that they are likely to interfere with the prosecution witnesses is all speculative.

The applications were opposed and replying affidavits were filed by the Investigation Officer, PC Benard Korir on 19/2/2015 and 23/2/2015. He deponed that the Accused and witnesses hail from the same locality and the Accused are likely to interfere with them; that the prosecution evidence against the Accused persons is very strong and they are likely to abscond.

I do take note of the fact that this is the second application especially as respects Accused 1-3. I have taken into account the reasons for the court declining the bond. The court observed that the offence had been committed only five months earlier; the traumatizing and brutal manner in which the murder had been committed; and secondly, that if released at that time, that would send a wrong message to deceased's family and the witnesses may panic for fear of intimidation.

In an application for bond, the primary consideration is that the Accused will turn up for their trial. Other considerations are inter alia, that the Accused will not interfere with witnesses; the Accused's character and antecedents; whether the Accused's safety is guaranteed if released and other considerations based on the circumstances of each case.

Apart from the affidavits that were filed, the court asked for pre bail reports which were availed. There is no doubt that the Accused have fixed places of abode, and have families and there is no evidence that there is likelihood of revenge attacks on the accused as the probation officer found that the mood in the community is good. Though the relatives of the deceased are opposed to Accused persons being released on bond, there is no evidence of ill feeling toward them or threats to their life. Tempers have cooled. It is over a year since the offence was committed.

As regards the allegation that Accused persons are likely to interfere with witnesses, the prosecution has not been able to demonstrate that fact with any evidence. It remains mere speculation. From the pre bail report, the characters of the Accused persons is not questionable or in doubt. In the result, I find no compelling reason to warrant the court to decline to granting Accused persons bond. Each Accused may be released on cash bail of KShs.100,000/= and a surety of KShs.400,000/=. The Accused should be of good conduct, not interfere with witnesses and attend court as will be required of each of them. In default bond will be cancelled.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF MAY, 2015.

R.P.V. WENDOH

JUDGE

12/5/2015

PRESENT

Mr. Mungai for State

Mr. Muriithi for 4th Accused

Mr. Igweta for 1st – 3rd Accused

Accused Persons, Present

Faith, Court Assistant