



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 1 OF 2014

REPUBLIC.....PROSECUTOR

VS

OSCAR MWENDA GITONGA..... ACCUSED

RULING

The accused Oscar Mwenda Gitonga filed the application dated 2nd March, 2015 seeking to be admitted to bond pending the hearing of this case. He was charged with the murder of his own mother.

The application is premised on grounds that the offence is bailable. Bail being a constitutional right, because he is presumed innocent till proved guilty; that he is a Kenyan resident and is readily and willing to comply with any conditions that the court may impose and lastly that there are no compelling reasons to deny him bond.

Mr. Kariuki, Learned State Counsel opposed the application relying on the replying affidavit sworn by the Investigating Officer, PC Patrick Indeke in which he deposed that all the prosecution witnesses are accused's close relatives and if released he is likely to interfere with them; that the community is likely to avenge the deceased's death and lastly that Accused is likely to abscond.

This is not the first bail application. The first application was rejected by J. Lesiit on 24/7/2014. The court considered a pre bail report that had been filed. I have also taken it into consideration along with the affidavits filed. The reasons that the court gave for declining the application were that the offence had been recently committed and was still fresh in the minds of the family and community and there was likelihood of revenge; that the family members were fearful of accused and it would be worse if he was released and that the family members had described him as another person.

In an application for bond the court considers inter alia;

1. Whether the accused person will turn up for his trial;
2. Whether he is likely to interfere with witnesses;
3. The character and antecedents of the accused;

In the instant case, the Report and findings of the Probation Officer cannot change, that accused is violent and the family were scared of him and not even willing to stand surety for him. The Report from the family differed from that of the Public but since the accused's family members related with the accused

more closely they knew him better. The character and antecedents of the accused cannot be ignored.

It is not in doubt that the witnesses that will be called are close relatives of the accused and it is likely that accused will try to interfere with the witnesses or they will be intimidated by his presence at home.

In my considered view, there are compelling reasons to warrant this court to deny accused bond and I decline to grant application for bond. The accused will remain in remand till the case is heard and determined.

Orders accordingly.

R. P. V. WENDOH

JUDGE

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF MAY, 2015.

R. P. V. WENDOH

JUDGE.

In the presence of;

Mr. Mulochi for State

Mr. Kiogora for accused

Faith, Court Assistant

Accused.