



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL Case No. 69 of 2012

(Lesiit J)

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY MUTUMA M'IMANA.....1ST ACCUSED
GITONGA MATHAYO ALIAS GK. 'alias' MUTISYA.....2ND ACCUSED
SAMSON MICHUBU KANYANA.....3RD ACCUSED
CHARLES NTONJA M'NTHAKA.....4TH ACCUSED
JOSEPH GITONGA 'alias' KATO.....5TH ACCUSED
LAWI KAMENCHU M'NTHAKA.....6TH ACCUSED
SAMUEL GITONGA ZAKAYO.....7TH ACCUSED
JOSEPH KARIUKI KIRINGO 'alias' MUCHANGI.....8TH ACCUSED

RULING

1. The application for bail pending trial was made by Mr. Anampiu on behalf of the 1st accused in this case. The application is dated 16th March, 2014. It is supported by an affidavit which I have considered together with the annexures to the affidavit dated 16th March, 2014.
2. Mr. Anampiu who urged the application on behalf of the 1st accused, urged that his client was not a danger to anyone and that he was ready to abide by bond terms. He relied on the Pre-Bail Report dated August 2013 which was favourable to the 1st accused. He relied on 1st accused affidavit which annexes treatment notes and receipts showing 1st accused under goes constant medical attention.
3. There is a second application dated 26th March, 2014 filed on behalf of the 7th and 8th accused. I have considered the application together with the affidavit sworn by the counsel.

4. Mr. Wamache urged the application on behalf of the 7th and 8th accused. He urged that the issue of bond is discretionally. Counsel urged that his clients had fixed abode and were willing to abide by bond terms. In addition the 7th and 8th accuseds were the sole bread winners according to the affidavit filed by their counsel.
5. Mr. Moses Mungai, the prosecution counsel opposed the application. He relied on the filed Replying Affidavit dated 7th April 2014. He urged that there was still hostility on the ground as a result of which a suspect who had been at large was apprehended and lynched by the public.
6. Regarding the 1st accused, Mr. Mungai urged that there was nothing extra ordinary about his condition. In regard to accused 2nd to 8th the learned prosecution counsel urged that they had another case before Maua Court.
7. This is a second application for bail being made on behalf of the accused. The application has been made in respect of the 1st, 7th and 8th accused.
8. In regard to the 7th and 8th accused, the prosecution contends that they have another case which is assault related and touching on the current case. This has not been denied by the 7th and 8th accused.
9. This is a serious offence and from prosecutions submissions, it was committed way after the offence the subject matter of this case. It involves same parties witnesses and accused.
10. It is trite law that bond pending trial should not be granted where it has been shown the accused is likely to re-offend. In the case of 7th and 8th accused they have been shown to have committed a fresh offence after the previous one.
11. I find these are compelling reasons not to grant bail to the 7th and 8th accused.
12. As I stated earlier, this is a second such application. In regard to the 1st accused, my earlier ruling made specific findings in regard to the 1st accused that from Pre Bail Reports and witness statements, he was a brother of the deceased and was suspected to have been the mastermind. That position still holds.
13. The fresh application by the 1st accused is based on medical treatment notes. Even though the affidavit to which the notes are attached claims 1st accused has diabetes, the notes shows treatment for back pain. In any event there is nothing to show the 1st accused condition cannot be managed while in prison.
14. Having considered 1st accused application I find no unusual unique or special circumstances which would warrant this court to grant him bail.
15. I have come to the conclusion that the application for bail by 1st, 7th and 8th accused must fail and I accordingly dismiss them.

DATED AT MERU THIS 15TH DAY OF MAY 2014

J. LESIIT

JUDGE.