



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CR CASE NO. 27 OF 2013

REPUBLIC.....PROSECUTOR

-VERSUS-

STANLEY MURURU IKIARIA.....1ST ACCUSED

EDWIN MWITI IKIARIA.....2ND ACCUSED

RULING

1. The accused persons face four counts of murder contrary to section 203 of the Penal Code. The deceased are parents and their 2 sons. The accused in a Notice of Motion dated 26th March, 2014 seek to be granted bail pending the hearing and determination of this case. The grounds of the application are;
 - a. **Given the upon further grounds and reasons to be adduces at the hearing hereof.**
 - b. **That the 1st applicant, has a young family and a father of twins aged 2 years.**
 - c. **That the 2nd applicant is aged 17years and was a class eight candidate at Lanyiru Primary school in last year's examination but due to incarceration he never sat for the same.**
2. In Mr. Kiogora's submission he urged that the 1st accused has a young family. The 2nd accused, Mr. Kiogora submitted, is aged 17 years old. Counsel urged that there are no compelling reasons to deny bail. He relied on the application and grounds on the face of the application and the filed affidavit in support, all which I have considered.
3. Mr. Mulochi, Prosecution Counsel opposed bail. The learned Prosecution Counsel urged that the accused persons caused the death of four family members in a very cruel manner. Prosecution Counsel submitted that both accused were brothers and the deceased were the nephews and cousins of the deceased. He submitted that the accused were likely to interfere with witnesses. He relied on two replying affidavit whose contents I have considered.
4. I have considered the submission by both counsels. There is a Pre- Bail Report on each of the accused persons filed by the Probation Officer, B.G. Mbogo. The Probation officer has left it to court's discretion to determine the suitability or otherwise of the accused to be granted bond. The Report is very clear however that a retaliatory attack against the accused persons, if granted bail is inevitable.
5. I have considered the application. The principles which apply to an application for bail pending trial were ably considered in the celebrated case of **Ng'ang'a vs Republic 1985 KLR 451** where Hon. Chesoni J, as he then was held:

“1. The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors:

(a) In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:

(i) The accused will fail to turn up at his trial or to surrender to custody;

(ii) The accused may commit further offences; or

(iii) He will obstruct the course of justice.

(b) The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

- i. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
- ii. The strength of the prosecution case;**
- iii. The character and antecedents of the accused;**
- iv. The likelihood of the accused interfering with prosecution witnesses.**

Where more than one person are jointly charged with a criminal offence, the case of each accused person must be examined on its own facts and this applies also to an application for bail in which each accused person’s application is to be considered on its own facts, circumstances and merit.”

6. There are four deceased persons in this case. The accused persons are cousins and nephews to the deceased. The incident took place only a year and 2 months ago. The incident is therefore very recent. Due to the large number of deceased persons in the case, the warning or caution in the Pre-Bail Report cannot be overlooked or ignored.

6. I had a chance to peruse the statements of witnesses which the State proposes to rely on. The circumstances of the offence are very serious indeed and the offence appears to have been unprovoked. The very nature of the offence and the manner in which it was executed gives a glimpse of the accused antecedents. The witnesses are immediate family members of both the accused and the deceased persons. Given the incident was recent and emotions may still be high, and the wounds still very fresh, it is my view that it is rather too soon to even consider this application.

7. It is my considered view that it will be in very bad light to ever consider bail at this stage. I find that there are compelling reasons not to grant bail. Accordingly I decline the application and dismiss the same. Accused persons will remain in custody pending their trial, or pending further orders of the court.

DATED AND DELIVERED AT MERU THIS 10TH DAY OF JULY, 2014

LESIIT, J.

JUDGE