



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 21 OF 2011
LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

LEONARD NJATI KALAWA..... 1ST ACCUSED

FRANCIS KALAWA KIRIGIA.....2ND ACCUSED

RULING

1. The accused persons are charged with the murder of Francis Murunga Karuri.
2. The accused seek to be released on bail pending their trial. Mr. Gichunge who urged the application on behalf of the accused persons urged the court to grant the application on grounds accused were father and son, that they had promised on oath to abide by the conditions court may impose for their bond, and for reason they have been in custody since 2011.
3. Mr. Mungai Senior Prosecution Counsel opposed the application for bail. He relied on his replying affidavit. Counsel urged the court not to grant bail as there still existed hostility on the ground and further because the attack was unprovoked.
4. I have considered the pre-bail report filed by the Probation Officer, Ms Jane Macharia, on each accused person. Even though the Officer is non-committal on whether bond should be considered or not in each case, she comes out very clearly that the family of the deceased has not healed since the loss of the deceased. The officer is also very clear that the tension on the ground is still high and hostility and retaliation cannot be ruled out if bond/bail is granted.
5. I have considered submissions by Mr. Gichunge for both Accused and Mr. Mungai for the State. I have also considered the affidavits filed by both sides.
6. Mr. Mungai, in his affidavit deposes that his depositions are based on information obtained by virtue of being the prosecutor in conduct of this case. He deposes that there is still hostility on the ground from both the members of the family of the deceased and the villagers.
7. The presence of hostility was also a profound finding by the probation officer, Ms. Jane Macharia which she found out during the social inquiry for the preparation of her Pre-Bail Reports.
8. Bond should not be denied unless there are compelling reasons shown that would dictate otherwise. In this case the Probation Officer has stated clearly in her Reports on both accused that the villagers, where both accused and deceased came from were still hostile against the accused persons and are both bitter and apprehensive if bond was granted to them.
9. Ms Macharia also found out that the mother of the deceased had not healed from the loss of her son and that she still required more time.
10. Ms Macharia also found out that the villagers blamed the two accused persons for their

- drunkenness habits and felt these contributed heavily to the case.
11. I am aware that an accused person should be considered innocent until proved guilty. I am also aware that the incident took place 3 years ago.
 12. The report that both accused are given heavy alcohol consumption and the community's apprehension if they are released on bond reflects something about the accused character, which is relevant to this application. It does show that if the heavy alcohol consumption is repeated upon release, chances of the re-offending by the accused are high.
 13. There are also concerns in my view, regarding the hostility by the community where the accused persons and deceased come from. That hostility cannot be overlooked, especially because Ms. Macharia was weighed down by it enough to cause her to make mention of it in her report. Hostility, if it was to flare up, can lead to disturbances or unrests in the very least, and attacks of whatever magnitude at the very most. I choose therefore to give the Probation Officers concerns due consideration.
 14. I have considered that it's been just over 3 years since the incident. The mother of the deceased should have healed sufficiently by now. However, Ms. Macharia felt she needed more time.
 15. I have come to the conclusion that the danger of a flare up of hostilities if accused persons are released on bond, and the danger of re-offending due to accused persons character of over indulgence to alcohol both are compelling reasons well demonstrated which warrant this court to deny the two accused persons bail.
 16. Accordingly I declare to grant accused bail and order that they should remain in custody during the pendency of their trial or until further orders of this court.

DATED SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF SEPTEMBER, 2014.

J. LESIIT

JUDGE