



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE 23 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

NTONGONDU M'IBIRI.....ACCUSED

RULING

The accused has been charged for the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On the 9th March, 2012 at Kanana Bar within Isiolo Township in Isiolo County murdered Bernard Kubai”.

On 5th June, 2012 the defence counsel applied for bail pending trial. According to the learned counsel the accused had given an undertaking to attend the trial and all the mentions in this case. Besides the above he also submitted that the accused has promised not to cause any trouble to any witness or person. Further to the above, he also submitted that the accused is a Kenya citizen residing in Meru County. Apart from the above the learned counsel also submitted that the accused is 58 years old with a family and children who all reside in the county. In conclusion the learned counsel urged this court to find the accused fit to be granted bail before trial.

In response the learned State Counsel requested for time to consult the Investigating Officer. However by 12th of June, 2012 the State was unable to file any affidavit in opposition to the application. In addition to the above the learned State Counsel requested the court to call for a pre-bail report from the Probation Officer. On 25th June, 2006 the Probation Officer in charge of Tigania area filed his report. His findings and observations are as follows:

- **“The crime was committed just three months ago hence the emotions are still running high.**
- **The Suspect is alleged to have injured two more people who did not prefer any charges against him.**
- **The family of the deceased fear the economic wellbeing of the suspect could be used to influence or intimidate the witnesses.**

- **The incidence took place away in Isiolo town in a bar hence the two families have different versions as to what really transpired.**
- **The family of the deceased is yet to come to terms with the loss of their loved one to an extent that his first born son (12 years) has disappeared without trace.**
- **There is a risk of revenge if the suspect is released at this point in time.**

Recommendations:-

You're Lordship, considering the above findings and observations, I recommend that the suspect's application for bail should be deferred until the prevailing animosity between the two families is calmed down. My recommendation is however subject to the honourable court's final findings and discretion."

After the receipt of this report the defence counsel namely Mr. Mwenda stated that he did not think that there is any serious objection to the accused being released on bail. Apart from the above he also submitted that the sentiments that have been expressed by the family of the deceased are usually expected in a case of this nature. In addition to the above he also submitted that the report does not express any apprehension of the accused running away. On the basis of the above he has urged this court to exercise its discretion and place the accused on bond. In response the learned State Counsel requested this court to be guided by the Probation Report.

This court has carefully considered the submissions by the learned counsels and the report by the Probation Officer. It is apparent that the incident took place less than 4 months ago and hence it is understandable that the emotions are still running high. The court also notes that the family of the deceased has not yet come to terms with the loss of their loved one as demonstrated by the pre bail report by the probation officer. Taking all the circumstances in consideration I am of the considered opinion that it will not be wise nor prudent to release the accused on bond at this stage. Given the animosity between the two families one cannot overrule a situation where the family of the deceased may try to revenge the death of the deceased. This court respectively declines to grant the accused bail at this stage. However the accused may renew his application for bail at a later but appropriate stage.

Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of

Mwenda Murango Defence Counsel

Motende State Counsel

MUGA APONDI

JUDGE

10th JULY, 2012