



REPUBLIC OF KENYA



**Kinuthia & 6 others v Republic (Criminal Case E023 of 2024)
[2024] KEHC 10509 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E023 OF 2024**

**A MSHILA, J
AUGUST 28, 2024**

BETWEEN

**WALLACE MBUGUA KINUTHIA 1ST APPLICANT
ANTONY KAMAU WAITHERA 2ND APPLICANT
GEORGE GITAU NGIGE 3RD APPLICANT
SIMON MBUGUA THUO 4TH APPLICANT
DANIEL WACHIRA MITHUTE 5TH APPLICANT
DOROTHY NJERI MUIRURI 6TH APPLICANT
JOSHUA NGANGA MITHUTE 7TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants were charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code; they are accused of having murdered Lewis Makimei Ngari on the 5th June, 2024. The applicants have filed applications for admission to bail pending the hearing of the Murder case which are premised under the Articles 49(f) and 50(a) of the *Constitution* 2010.
2. This court directed the Probation Office to prepare Pre-Bail Reports for all the accused persons; the same were prepared and filed in court on 23/07/2024.
3. The parties were directed to canvass the applications by making oral submissions; hereunder are the rival submissions made;



1st, 2nd, 3rd, 5th And 7th Applicants Submissions

4. Mr. Kahiga counsel for the 1st, 2nd, 3rd, 5th and 7th accused persons submitted that the accused persons should be admitted to reasonable bond terms. That the accused persons have fixed abode as such not a flight risk and that they will attend court as required. He stated that the accused persons have been cautioned about the seriousness of the offence and the penalty imposed as well as being advised that bond is not the end to the means as the same can be cancelled and that they should adhere to the court's terms religiously. It was submitted that facts as stipulated in the affidavits will be interrogated during trial, that some statements in the affidavits are mere allegations which have not been substantiated as such they are speculative and that interference with witnesses should be prosecuted by a court of law.

4th Applicants Submissions

5. Mr. Kihoro for the 4th accused person associated himself with Mr. Kahiga's submissions. He urged the court to give the 4th accused person reasonable terms. He contended that the accused is a family man and will attend court when required. That the accused has a young family that is dependent on him and that the children will drop out of school as the mother is unemployed. That the claim that the accused persons should be put in custody for their own safety lacks specificity in regard to the 4th accused. That the claim that the villagers will attack the accused person is not true as they live far apart.

Respondents Submissions

6. Mr. Gacharia, counsel for the state, submitted that the court should look at the victims concerns and balance the same with the rights of the accused. That the family is concerned with witness interference which is a strong ground to be considered in denying bail. It was submitted that in the event the court gives bond, the same should be equal to the task and that necessary conditions should be placed to ensure protection of witnesses from interference.

Analysis

7. The applications were all opposed by the prosecution and having noted the contents of the two affidavits availed by the prosecution this court states that the right to bail has limitations and the same can be denied if compelling reasons are found.
8. The averments in the affidavits confirm that the accused persons and the star witnesses are from the same village; This is a fact that has also been confirmed by the Area Chief; the Investigating Officer and a civilian prosecution witness have made averments under oath with the civilian witness stating that he has been intimidated and has received death threats from the accused persons; therefore it is the prosecution's contention that there is a possibility of the accused persons interfering with the witnesses; with a likelihood of suppressing evidence that may incriminate them;
9. This court states that with the advent of the new *Constitution* 2010 times have indeed changed and that although the accused persons have been charged with a serious offence of Murder which carries a death sentence, the offence is bailable.
10. The above notwithstanding this court reiterates that the right to bail has limitations and the same may be denied if compelling reasons are found; the state provided two affidavits that support the fact that apart from the 4th applicant all the other Applicants and the nine (9) prosecution witnesses inclusive of the star witness hail from the same village; this is a fact that has been confirmed by the Area Chief in the Pre-Bail Reports; Two (2) of the Applicants namely the 3rd Applicant (George) and 5th Applicant (Daniel) are persons with pending criminal cases and are said to be out on bail; which means that having



been charged with the instant offence they have breached their bail/bond conditions which require them to be of good standing and character during this period; having been arraigned in court leads to the presumption that they have engaged in activities that have brought their character into question leading to the arrest;

11. The affidavit of the civilian prosecution witness made under oath is sufficient proof of a complaint on intimidation and threats having been lodged with the Investigating Officer. The Investigating Officer also averred that there are other accused persons who are yet to be arrested and there is that likelihood of the Applicants interfering with further investigations or suppressing evidence that may incriminate them;
12. This court is thus satisfied that there is sufficient evidence that if the 1st, 2nd, 3rd, 4th, 5th and 7th Applicants are released there is a likelihood they will interfere with the prosecution witnesses and jeopardize their security;
13. From the forgoing material placed before this court and in exercise of its discretion this court is satisfied that there exists compelling reasons to support the Applicants continued detention and denial of bail;

Findings And Determination

14. For the forgoing reasons this court makes the following findings and determinations;
 - i. This court finds that there are compelling reasons to deny the 1st, 2nd, 3rd, 4th, 5th, and 7th Applicants admission to bail at this stage;
 - ii. Their applications for bail are hereby disallowed at this stage; the Applicants are at liberty to apply for a review after the star witnesses have testified;
 - iii. Mention on 23/10/2024 at noon.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF AUGUST, 2024.

A .MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Gacharia – for the State

Kahiga and Kiroko – for 1st, 2nd, 3rd, 5th and 7th Accused

Njenju for victim's family

Jesse – for the 4th Accused

