



**Republic v Kamongwe (Criminal Case 26 of 2018)
[2023] KEHC 22699 (KLR) (24 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 26 OF 2018
TM MATHEKA, J
AUGUST 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SILAS KAMONGWE ACCUSED

RULING

1. The accused person is charged with murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya. It is alleged that on October 2, 2018 at Boma Village Iuani Location, Makueni County he murdered Cosmas Mutua Kivili.
2. He pleaded not guilty on January 21, 2019 but could not be admitted to bond/bail because the Pre Bail Report indicated that his life would be at risk - from the vengeance of the family/community. That was in February, 2019. In July 2019 the PBR said the same things.
3. I took over the matter on May 17, 2023 - at a time when the the members of the Law Society of Kenya who had signed up to offer probono legal services to murder had downed tools pursuant to a dispute between them and Chief Registrar Judiciary over the payment of the fees.
4. It is not known when the boycott will end - and the only thing happening now is - mentions to confirm - progress of the settlement of the boycott issues.
5. I have requested for bail review report from probation after care service. The report has been filed. I have considered the report dated August 13, 2023 and the assessment as to whether the accused is suitable for bond is word for word as the report dated July, 2019.
6. The question that begs in the mind of the court is how that is possible - that the accused is at risk of vengeance from the family of the victim, and the community - 5 years after event, during which period -



- the family of the victim and the family of the accused are reported to have gone through the traditional reconciliation process , paid the customary cow and money for the reconciliation rites?.
7. How then, is those circumstances can the probation after care service still come back to say that the accused is unsuitable due to hostility from the family of the deceased? Surely when the 2 families sat as is stated in the report, the community must have been involved, and the local administration as well. The local administration - the chief who says safety of accused cannot be vouched for most have been present - how come then, if the report is correct - the family of deceased is said to be still hostile?
 8. The report creates that inconsistency without explaining the reason why that is the position especially after the reconciliation process.
 9. The accused person's right to bond can only be denied if there are compelling reasons for the same . The Probation After care Service Officer other than the cut and paste report from the previous report has not explained why 5 years after the event there would still be alleged hostility. If there is a break down in law and order within the sub location where the accused comes from and the people take the law into their own hand and resort to mob injustice on suspects - it is the failure of the criminal justice system in that area - because the criminal justice agencies ought to cultivate trust in the system so that suspects are presented before the police for investigation and prosecution. The alleged "Irate youths" who attempted to lynch the accused person ought to have been arrested as well, and dealt with in accordance with the law.
 10. While it is the duty of the court to ensure that a suspect whose life may be in danger if released from remand is retained in custody, it is also the duty of the other security agencies to ensure that law and order, rule of law is maintained within the society.
 11. In the circumstances I find no existing compelling reason to deny the accused person bond and he is admitted to bond of Kshs 150,000 with one surety of similar amount/or cash bail of kshs 100,000 with contacts and identity documents.

DATED SIGNED AND VIRTUALLY THIS 24TH AUGUST 2023

MUMBUA T. MATHEKA

JUDGE

