



**Republic v Ongoro & 2 others (Criminal Case E020 of 2023)
[2023] KEHC 24127 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E020 OF 2023
WM MUSYOKA, J
OCTOBER 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

KEVIN ONGORO 1ST ACCUSED

JOSEPH ONGORO WANJALA 2ND ACCUSED

SEMI ONDUODO 3RD ACCUSED

RULING

1. When the accused took plea on 25th October 2023, the prosecution indicated that it was opposed to their being admitted to bail/bond, and that it had filed an affidavit setting out the grounds. Ms. Chepkonga, for the Republic, said compelling reasons existed for denial of bond, based on the affidavit, of the investigating officer of 25th October 2023. She proposed that bond should be withheld until after the witnesses testified. She submitted that the safety of the accused could not be guaranteed, and pointed the court to a letter from the area Assistant Chief, attached to the affidavit of the investigating officer. She stated that the village, where the accused and the deceased hail from, and where the incident happened, was still in a hostile mood, after the incident, and something nasty could happen to the accused, should they be released on bond. She further submitted that the witnesses were also in fear. She mentioned that the body of the deceased was yet to be interred. She submitted that compelling reasons existed for denial of bond, and cited *Michael Juma Ouma vs. Republic* [2019] eKLR.
2. Mr. Ouma, for the accused, opposed the application. He stated that nothing had been presented to demonstrate that the accused were a flight risk, and there was no proof that the accused had issued threats, as they had been in custody for a long time. He submitted that the area Assistant Chief could not be trusted to be neutral, as he was related to the deceased, hence his letter was biased against the



- accused. He complained that the accused had been in custody for 4 weeks before plea was taken, and urged me to take that into account.
3. In rejoinder, Ms. Chepkonga submitted that the accused were arrested on 27th September 2023, 2 weeks after the incident, by which time some witnesses had been threatened, and some neighbours declined to record statements as a result. She defended the Assistant Chief, saying that no proof had been availed, that he was related to the deceased. She asserted that he was a public officer, who was working with the police, to secure the village. She mentioned that the accused had relatives in Uganda, and expressed fear that upon being granted bond, they may flee there.
 4. I have read through the affidavit by the investigating officer and the letter from the Assistant Chief, as well as the other material on record. I have also considered the rival submissions made by both sides. The court is not on the ground, and ordinarily it does not conduct its own investigations or carry out independent enquiries into matters of this nature, and can only rely on the police, as government security agents, or on local administrators, such as the Assistant Chief, or on the probation office, in the event a pre-bail report is called for. Whatever such officers place on record is taken with some level seriousness, as a guide on what could be the situation on the ground. The court, like other government agencies, has a duty to look out for the interests of all involved and affected. It has a responsibility, so far as maintenance of law, order and security is concerned.
 5. The surrounding circumstances in this case, in terms of what is detailed in the record, the fact that the incident happened so publicly, in broad daylight, in the presence of several individuals, and in the midst of an ongoing land dispute, cannot be ignored, in the sense that such could inflame tensions and create an atmosphere of hostility. The fact that the remains of the deceased have not been interred to date for the same reasons, would explain why it may not be prudent, and could be irresponsible, to release the accused to a charged environment. The same environment, no doubt, could be conducive to the incidence of issuance of threats, and expression of fear, heightening the possibility of interference with witnesses. The proximity of the area to the border with Uganda, and the likelihood that both sides have relatives across the border, taken together with the volatile ecology or poisoned environment, is another consideration that ought not be ignored, in the sense of the real possibility of flight risk on the part of the accused. The accused have a constitutional right to the presumption of innocence, and the court is not at all assigning any culpability to them, at this stage, on account of its having to take into consideration the circumstances on the record, to determine eligibility to bond, but that should not blind the court to the possibility of releasing them to clear danger, whether they were party to that incident or not. Let their safety be secured first, before consideration can be given to their liberty.
 6. It would be best to err on the side of caution. The sense that I have of this matter, from the circumstances, militates against the release of the accused persons on bail/bond for now, for their own good, and for the sake of maintenance of law, order and security within Segero B Village, in the best interests of the community. I shall deny them bond for now. They shall remain in remand custody, although the application for their release on bail/bond could be renewed, after the key prosecution witnesses have testified. It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 27TH DAY OF OCTOBER 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates



Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

Mr. Ouma, Advocate for the accused persons.

