



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ngolwa & 3 others (Criminal Case 90 of 2016)
[2022] KEHC 11906 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 90 OF 2016
EM MURIITHI, J
AUGUST 17, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE MUGAMBI NGOLWA & 3 OTHERS ACCUSED

RULING

1. The 4th accused whose application for bail comes up for a ruling was repeatedly charge upon arrest on 7/7/2022.
2. The offence is alleged to have occurred on 22/8/2016 at Manguene Village of Mbeu Location in Tigania West Sub-County of Meru County.
3. In opposing bail the DPP filed an Affidavit by the Investigating Officer, P.C Abdinassir Billow of 12/7/22 in which it is deponed primarily that the 4th accused had been at large and on the run immediately after commission of the offence on 22/8/2016 until 6th July, 2022 when he was arrested, and that one of prosecution witnesses, Flora Karimi whose statement was attached had been receiving threats seeking to have the murder case withdrawn against all the four accused persons.
4. The accused has not responded to any of the two principal grounds of opposition to bail and the court has only the position of the DPP on this aspect.
5. The alleged threats to witnesses Flora Karimi has not been shown to emanate from or to have been made by the 4th Accused and it is, therefore, not appropriate for this court to consider it as compelling, although interference with prosecution witness is for its deleterious effect on the prosecutorial mandate charges a compelling reason. The court notes that the other 3 accused persons have been out on Bond and it would be unfair to use the ground of threats on witness as a compelling reason to deny bail to only the 4th accused while the threats are said to be directed to the withdrawal of the charges against



all of them. The alleged threats were made on 15/6/2022 and 10/7/2022 by persons allegedly sent by James Ngolwa, the 2nd accused.

6. However, the issue of the 4th accused being a flight risk is distinct and separation for the 4th accused also has according to the prosecution been at large and on the run for 5 ½ years since the offence. The primary consideration on bail is that the accused shall when released attend court faithfully whenever required by the court for the trial of the charges. Evidence of like-hood of absconding based on the fact of long absence from the accused's place of abode as alleged herein supports the flight risk factor of the 4th accused.
7. The court invited a Probation Officer's Pre-bail report on the 4th accused and the same was positive for release on bail but reference to the Area administration who "indicated that they have no report of him jumping bail" is not elaborated and such administration officers are not named. If the accused has not been arraigned in court with the offence and bailed then issue of jumping bail could not arise. It would appear that the Probation officer's report herein was tailored to persuade the court release the accused on bail. Against the affidavit evidence of the Investigation Officer that the accused had been at large and on the run which has not been controverted by the accused, the bare Probation Officer's report does not help.

Orders

8. Accordingly, for the reasons set out above, the court finds a compelling reason for denial of bail for the 4th accused on the ground that he is a flight risk having on the evidence been at large and on the run since the commission of the offence.
9. Bail is denied to the 4th Accused.
10. In accordance with judicial policy where an accused's bail is refused, trial of the case shall be fixed on priority basis.

Orders accordingly.

DATED AND DELIVERED THIS 17TH DAY OF AUGUST 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. B. Nandwa Prosecution Counsel for DPP.

Mr. Mageria, advocate for Accused.

