



REPUBLIC OF KENYA



**Republic v Nyamongo (Criminal Case E027 of 2022)
[2022] KEHC 12225 (KLR) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E027 OF 2022
REA OUGO, J
AUGUST 1, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

ENOCK ABERE NYAMONGO ACCUSED

RULING

1. Enock Abero Nyamongo has been charged with the murder of Anderson Arasa Nyamongo. The prosecution has objected to bail/bond.
2. There is an affidavit sworn by No 71824 Cpl Japheth Musimi. In the said affidavit he states that before the accused was arrested the accused went to the home of Mose Ongaki Japheth a witness in this case and he threatened to kill him if he presents himself as a witness. That on the morning of April 23, 2022 the witness made a report at Nyamache Police Station about the threats vide OB No 13/23/4/22 at 1350 hours.
3. That in the evening of April 25, 2022 at around 1730 hours angry members of public confronted the accused and wanted to lynch him and he was only rescued by police officers who were going to effect the arrest.
4. It is deponed by Cpl Musimi that it would be in the public interest and interest of justice that bail and bond be denied in the case taking into account the reaction of members of public.
5. The application was opposed. Miss Onyiego for the accused submitted that there was no tangible evidence to support the allegation and that there was no evidence to show interference (see R v Dwight Sagaray & others HCCR 61/12). It was submitted further that it is the duty of the State to ensure the security of its citizens and to put in place security measures. That the *Constitution* of Kenya, 2010 guarantees an accused person bail/bond in murder cases too. That the accused presented himself to



the police during investigations and kept reporting before the arrest. The he did not abscond and he is not a flight risk.

6. Bail/bond as per our Constitution 2010 is a constitutional right. However bail/bond can be denied to an accused person if the prosecution demonstrates that there are compelling reasons to do so. Cpl Musimi has deponed that the accused threatened a key witness and there is an OB report which is quoted in his affidavit. Though the officer has not attached the OB report I am persuaded that it exists. I find that this is a compelling reason to deny the accused person bond.
7. A threat to kill a witness is not a small matter one can actually actualize it. Further the accused was arrested at a time he was about to be lynched by members of the public. I have to take this into account noting the mob justice cases within Kisii area are quite prevalent.
8. I find that the reasons given by the prosecution are compelling reasons that warrant a denial of bail. The accused person shall be remanded in custody until such time that this court reviews this order.

DATED, SIGNED AND DELIVERED AT KISII THIS 1ST DAY OF AUGUST, 2022.

RE OUGO

JUDGE

In the presence of:

Miss Onyiego for the accused person Present

Mr Mulati State Counsel Office of the DPP

Aphline Court Assistant

