



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CRIMINAL CASE NO. E070 OF 2021

REPUBLIC PROSECUTOR

VERSUS

JOSPHAT MAITHYA MANZI1ST ACCUSED

ALEX KALONZO KALAMBA alias KIVANGA.....2ND ACCUSED

RULING ON BOND

1. The court has considered the application for bail by the two accused persons herein who are facing the charge of murder Contrary to section 203 as read with 204 of the Penal Code. The issue for determination is whether compelling reasons for denial of bail have been demonstrated by the prosecution in terms of Article 49(1) (h) of the Constitution.

2. The DPP opposed the grant of bail on the grounds set out in the Affidavit of the Investigations Officer, I. P Charles Kyalo sworn on 12/11/2021, indicating, principally that-

(i) All the key prosecution witnesses and the accused live in the same locality and there is a higher probability of witness interference, citing death threats OB 49/14/9/2021 to the deceased and the deceased's relatives given on 14/9/2021 prior to the murder on 28/9/2021.

(ii) There is another murder incident connected to the present one where the accused persons are being investigated under OB 36/22/10/2021.

(iii) The ground is hostile and there is possibility of retaliatory attacks on the accused by the affected Ugoti and Kiande communities;

(iv) With regard to the 1st accused, his relationship as father to one Kitonga Maithya who is a key suspect hereof may interfere with police efforts to search and arrest the said suspect.

3. On request of counsel for the deceased families on watching brief, the court ordered for pre-bail reports on the situation on the ground, which the two Probation Officers reports dated 19/11/2021 found in respect to both accused that "the main issues revolve around ownership of land [and] some people have formed unlawful groupings to defend their interest. As regard the 1st accused that he is "a very influential person [and] it is alleged that there is a militia group within the area which cropped up as a result of land demarcation process which has been ongoing for long and [the 1st] accused is allegedly the main master-mind behind this group."

4. On the part of the 1st accused, the court has considered that he is 69 years old, ailing from diabetes with need for constant care on diet and hospital clinic visits. The 2nd accused is 30 years old married with 2 children aged 5 and 2 years.

DETERMINATION

5. On the whole, the court finds that there is justification for denial of bail in the short term to allow for the investigation into the related murders to complete and the arrest of the other suspects and for the security machinery to contain the fluidity of the situation on the ground engendered by the said ongoing process of demarcation of land in the area. The court considers that a period of 30-60 days is sufficient for that purpose.

6. In the meantime, the 1st accused's health shall be guaranteed and attended to by the prison authority in accordance with Prison

Regulations. The compelling reasons of security of witnesses from interference, securing the ground to avoid hostile clashes on the accused or between the communities and the alleged militia and the facilitation of the police investigation for the arrest of other suspects in the two related cases, to enable effective prosecution of the crimes outweigh any hardship that the accused persons may encounter on account of their respective situations.

ORDERS

7. Accordingly, for the reasons set out above the court declines the application for bail for the 2 accused persons and directs that their application may be renewed after 30 days in the event of changed circumstances.

Orders accordingly.

DATED AND DELIVERED THIS 29TH DAY OF NOVEMBER 2021.

EDWARD MURIITHI

JUDGE

Appearances

Mr. Gichunge Advocate for Accused

Mr. Nandwa Prosecution Counsel for the State

Mr. Mbogo Kirimi for watching brief for the family of the victims