



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT VIHIGA**

**CRIMINAL CASE No E005/2021**

**BETWEEN:**

**REPUBLIC**

**and**

**(1) NAAMAN MAI MUHANDO**

**(2) DORA AYUKO MUHANDO**

**RULING ON BAIL APPLICATION**

1. The First and Second Accused have been charged with the Murder Silas Angatsa Pius. It is alleged that they beat him to death jointly and collectively using runigus – and not pangas as stated in the Pre-Bail Report. The Two Accused are brother and sister and the Deceased was a neighbour. It is said that the altercation took place at the home of the Deceased on or about 24<sup>th</sup> July 2021 in Eburnago Village, Tongoi location, Emuhaya sub location within Vihiga County. It is said that the two Accused suspected that the Deceased had stolen their chickens on more than one occasion. By all accounts it was a brutal affair.

2. As stated the two Accused are siblings they live in Eburnabo A Village in Emuhaya Sub-County. The First Accused Naaman Mai Muhando is 46 years old he is the Eldest son of the family. They both have a level of education and they both eke out a subsistence livelihood for themselves and they help their parents. The Second Accused is a mother of two. She was married but moved back to the family compound when her marriage broke down. She supports her children who are now re-located to Busia to live with an aunt. They too are affected by these proceedings.

3. There are two separate pre-bail reports. The Report for the First Accused was received in Court on 15<sup>th</sup> November 2021 and is prepared by Bernard Wembe. It says the Accused is presently held in Kakamega Main GK Prison. The Officer writing the report says that in the course of his inquiries he interviewed the family of the Accused and the family of the Deceased.

4. The Accused has no previous offences recorded. He is said to be likely to comply with bond terms because they were both released on police bail to report every Friday and they both complied with the terms. The Accused come from a stable family. Their father was a teacher and their mother was a peasant farmer. All the sibling have a level of schooling but none beyond secondary school. They all work. The family are said to live in an area full of alcohol, brewers and bhang smokers yet they manage to remain law abiding and generous. The Accused will be relying on family members to meet their bail/bond terms or provide sureties. The family are convinced that the First Accused is innocent. There is also a view within the Community that the Deceased was an alcoholic petty thief and trouble maker but they recognise that the incident was awful. The DCIO Emuhaya does not think that the First Accused is in danger of reprisals.

5. The First Accused is a welder at Eshururu Market. He has 4 children. After he was arrested his children were re-located to Busia to stay with an Aunt. The Report says that the Accused is well liked in the community and is considered unlikely to abscond. He is also considered unlikely to re-offend.

6. The family of the victim report that they are traumatised by the offence. They say that the accused should not be released back into the area because according to their traditions, they should not drink at the same sources of water nor interact with them because of the crime they committed. They did not say they feel at risk of harm.

7. The Pre-Bail Report for the Second Accused is prepared by Fanny Masinde. The Second Accused is the Mother of two who have also relocated to Busia to live with their aunt. The Second Accused is said to be outgoing and friendly and well like. She does not have a history of alcohol or drug abuse. She has complied with the terms of police bail set while she was in remand before taking plea. She is said to be held in Kakamega Prison. It is assumed that is a reference to Kakamega Women's Prison.

8. It is again reported that the family of the Deceased are bitter about the brutality of the offence which is described in the report as “cut with a panga” however, the post mortem report refers to blunt force trauma. The murder weapon(s) have not been found. There is also the concern about mixing with the alleged perpetrators before the appropriate Abanyore rites have been performed. It is not said that the Second Accused will be a threat if she is released on bail.

9. Albeit they are charged with a serious offence. The two Accused are described of descent hardworking people. They are of previously good conduct although they live in a community surrounded by changa brewers and so forth.

10. The two Accused are just that, Accused. They have taken plea and pleaded not guilty. There is therefore a presumption of innocence. Both reports state that the Accused are well liked and not likely to re-offend while on bail. However, there is also a family who have been bereaved in a very brutal manner. Their wishes and feeling and cultural concerns should also be taken into account.

11. In the circumstances, there is no reason to hold the Accused pending trial. Therefore, they shall be released on the condition that they shall attend for each hearing listed on the following terms: The Accused and each of them to be released pending trial on the following terms:

(1) Bond of KShs.300,000/- each

(2) Surety of like amount each

(3) The Accused shall not return to their homes and shall reside elsewhere until the prosecution witnesses of fact have given their evidence

(4) The Accused shall not communicate or attempt to communicate with the prosecution witnesses nor the family of the Deceased.

**Order accordingly,**

**FARAH S. AMIN**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS THE 16TH DAY OF DECEMBER 2021 IN KAKAMEGA IN OPEN COURT ON A DATE THAT WAS GIVEN IN COURT**

In the Presence of:

Court Assistant: Dennis Wasilwa

Flavin Mulama for the Accused

DPP Vihiga not present – network issues.