



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL CASE NO. 7 as consolidated with CR CASE NO. 8 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MICHAEL WAHANDA ABIDHA.....1<sup>ST</sup> ACCUSED**

**BONIFACE OTIENO.....2<sup>ND</sup> ACCUSED**

**NICHOLAS OWANGA WAHANDA.....3<sup>RD</sup> ACCUSED**

**KELVIN OTIENO OGEJA.....4<sup>TH</sup> ACCUSED**

**RULING**

1. The accused persons are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya for which a plea of not guilty was entered on 21<sup>st</sup> May 2020. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were initially charged in Cr Case No 7 of 2020 whereas the 4<sup>th</sup> accused person was charged separately vide Cr case No 8 of 2020. The 1<sup>st</sup>-3<sup>rd</sup> accused persons were released on bond pending trial vide the order of this court made on 2/4/2020 after taking of the plea on the said date.

2. With regard to the 4<sup>th</sup> accused person who is the applicant in this application for bail pending trial, when he appeared in court on 21/5/2020 he was represented by Mr. Oduol Advocate who applied for his release on bail pending trial. The application was vehemently opposed by the Prosecution who even filed an affidavit sworn by the investigating officer **CPL SULEIMAN OPONDO** on 21<sup>st</sup> May 2020.

3. On 10/6/2020 after consolidation of the two cases, this court did fix a hearing date being 13<sup>th</sup> and 14<sup>th</sup> July 2020 on priority basis considering that this is a Covid 19 season and therefore remanding of suspects into prisons is a serious challenge for prisons and the police service.

4. On 19<sup>th</sup> June 2020 the 4<sup>th</sup> accused who had now instructed Mr. Odongo Advocate to represent him in the matter filed an application for bail pending trial, which application is supported by the affidavit sworn by the 4<sup>th</sup> accused person on 18<sup>th</sup> June 2020. The said application was opposed by the prosecutor Mr. Okachi and Ms. Owenga counsel watching brief for the family of the deceased on the grounds that the accused was a flight risk, having been arrested long after his co accused had been arrested and he had fled to Uganda and that on the date of his arrest, he had returned to Kenya but was again escaping from the jurisdiction of the court. Further, that there are witnesses who are under protection and fearful of the release of the 4<sup>th</sup> accused person on bond.

5. I note that the application for bail pending trial is a replica of the oral application made by Mr. Oduol Advocate for the 4<sup>th</sup> accused person and which application is the subject of a detailed ruling dated 21<sup>st</sup> May 2020. No application was made for review of the said ruling and instead the 4<sup>th</sup> accused person seeks the same orders as if this court had not delivered any decision on an earlier application for bail pending trial.

6. For the above reason, I find and hold that this application is an abuse of court process and incapable of being considered on its merits. It is hereby dismissed.

7. The accused will remain in custody until the hearing and determination of this case which is on fast track.

Orders accordingly.

**Dated, Signed and Delivered at Siaya this 30<sup>th</sup> Day of June, 2020.**

**R.E.ABURILI**

**JUDGE**

Accused present in court

Ms. Rowena Ndeda h/b for Mr. Odongo Advocate for the accused person

Mr. Okachi Senior Principal Prosecution Counsel

CA: Brenda