



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 45 OF 2017

REPUBLIC.....PROSECUTOR

-VERSUS-

PETER MWEBIA.....ACCUSED PERSON

RULING

1. **Peter Mwebia** (*the accused person herein*) was charged with the offence of murder contrary to **Section 203 as read with 204 of the Penal Code**. The particulars of the offence are that on 8th June 2017 at Kathiringa village, Githingo Location Abothuguchi West Division in Imenti Sub-County within Meru County murdered **Diana Makandi**.

2. On 13th February 2018 this court declined to release the accused person on bond after it was convinced to the required standard that there were compelling reasons not to release him on bond. The specific reasons were captured in Paragraph 4 of its ruling, thus;

“Applying the test, the interviews conducted by the probation officer revealed that the family of the deceased could be in danger at the hands of the accused. It shows that threats through phone calls were made by the accused to them. Again, there is every likelihood that the accused will interfere with the witnesses. His attendance in court cannot also be guaranteed...”

3. On 27/2/2020 **Mr. Munene** advocate for the accused person applied for review of the ruling and eventual release of the accused on reasonable bond terms. He submitted that the lower court case in Meru Criminal Case No. 1119 of 2017 concluded in favour of the accused person, hence, the impediment to bail had been removed.

4. Notably, in **Meru Criminal Case No. 1119 of 2017**, the accused person was charged with the offence of **Kidnapping in Order to subject to grievous harm contrary to Section 260 of the Penal Code**. The particulars of the offence were that on the 8th Day of June 2017 at Thimangiri area in Imenti Sub-County within Meru County kidnapped **Lewis Karani** in order that **Lewis Karani** may be disposed of as to be put in danger of being subjected to grievous harm, well knowing that the said child will be so subjected to danger. However, the charges in Meru Criminal CASE No. 1119 of 2017 were withdrawn under **Section 87 (a) of the Criminal Procedure Code**. I will revisit this issue at a later stage when making the overall impression of the request for review.

5. The prosecution opposed the application for review of bond application. In an affidavit sworn by **Titus Bett**, the Investigating officer it was averred that even after arraigning the accused person in court in this case, he continued calling the complainant herein with strange numbers threatening her that she will be the next culprit. That the complainant is apprehensive that if the accused is released on bond he will actualize his threats to kill her.

6. In a brief rejoinder the accused person stated that the prosecution had raised similar sentiments of interference of witnesses in Criminal Case No. 1119 of 2017 but they never provided any witnesses in the trial court. He stated that no statement has ever been recorded by the alleged victim stating that he had threatened her in any way. No evidence has also been availed by the prosecution to demonstrate the numbers used to call the complainant four years down the line. He noted that the prosecution has equally not provided a pre-bail report to demonstrate that he is a man of high temper and full of vengeance.

ANAYSIS AND DETERMINATION

7. At the centre of this application is possible interference of witnesses by the accused person. The considered view of the court on this subject of interference with witnesses was stated in **Republic v Joktan Mayende & 3 others [2012] eKLR I** as follows:

"All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner. Interference with Witnesses covers a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person

including the accused, witnesses or other persons. The descriptors of the kind of acts which amount to interference with witnesses are varied and numerous but it is the court which decides in the circumstances of each case if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused...

In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general as envisioned by the people of Kenya in the Preamble to the Constitution of Kenya 2010.”

8. I find further reinforcement in **Republic v David Ochieng Ajwang Alias Daudi & 11 others (2013) eKLR** where Sitati, J. pronounced herself on this issue as follows:

"In my view, the above fears are not mere whims on the part of the prosecution. I am persuaded that because of the volatility of the situation on the ground, the temptation to jump bail is heightened to such an extent that this court cannot overlook it. It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility. In addition, the fact that the accused persons are so many is likely to send a cold shiver down the spines of such witnesses and corner them into resigning not to appear in court during the hearing of the case even if the accused persons turn up. In a nutshell there will be no witnesses to testify. As Makhandia J (as he then was) said in the Kiteme Maangi case (above), Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety."

9. In this case, the prosecution insists that the accused person threatened the complainant through phone calls that he would kill her. Nothing shows that these threats were not real or have dissipated or disappeared. The accused is also quite familiar with the complainant and other witnesses. I note with great concern that the hearing of this case has not commenced mostly due to adjournments at the behest of the advocate of the accused person. The complainant has not therefore testified—a fact that justifies her fear.

10. I am aware that the court is enjoined under the Constitution to protect the rights of the accused person. Similarly, I am acutely aware that the same Constitution recognizes and demands protection of rights of the victim of crime. See Article 50(9) and the Act thereto as read together with the relevant international conventions^[1] and treaties^[2] on protection of victims of crime as incorporated into our law under Articles 2(5) and (6) of the Constitution.

11. Where it has been shown that the accused threatened the victim of the crime, their families or witnesses in respect of the case the accused is facing, other than being a ground for protection of such victim under VPA, the incident also becomes a compelling reason not to release the accused person on bond under Article 49(1) (h) of the Constitution. It bears repeating that, such judicial intervention safeguards the integrity of the trial and is justifiable reason to limit the liberty of the accused person. What a novel constitutional angle to explain why interference with victims of crime, their families and witnesses on their behalf, is a compelling reason to deny a person bail?

12. With these judicial tools, courts of law are properly grounded to determine such requests as the one before me. But before I make my final decision on the matter, let me fulfil the promise I made about CRC NO 1119 OF 2017.

13. From the submission of defence as well as prosecution counsel, Meru Criminal 1119 of 2017 was terminated under section 87(a) of the CPC. The charges he faced were different although they arose from similar transaction as the case before this court. The termination was also not an acquittal in law and did not bar any future or other charges being filed against the accused. I do not therefore find any premium which will accrue to the accused from the termination of the said case especially in relation to bail. The termination thereof does not affect these proceedings.

14. Having said that, I find and hold that there is legitimate fear that the accused person will interfere with the witness. As long as these circumstances have not changed, there is compelling reason not to release the accused on bond. There are no legitimate reasons to depart from the court decision made on 13th February 2018. Accordingly, I dismiss the request by the accused on review. The accused shall remain in custody until this case is heard and finalized. However, I order the hearing to be fast-tracked for the sake of fair trial. It is so ordered.

Dated, signed and delivered at Meru this 17th day of September, 2020.

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F. GIKONYO

JUDGE

^[1] Clauses 4-6 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

[\[2\]](#) **Article 68(3) of the Rome Statute, of the International Criminal Court (ICC)**