



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL CASE NO. 33 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

PETER CHEGE MUCHERU.....ACCUSED

RULING NO. 2

1. The accused seeks *review* of the *refusal* of bail made on 20th December 2018. He contends that his *security* is no longer at risk; and, that he is suffering from a serious bout of chest pains.

2. Those matters are pleaded at length in a *notice of motion* dated 22nd February 2019. The application is supported by *two* depositions sworn by the accused and his brother, *Francis Njoroge*, on even date.

3. The centrepiece of the application is that the public at Kabati Township or its environs no longer pose a threat to the accused. In the affidavit of *Francis Njoroge*, it is deposed as follows:

That I come from the same area as the accused and I can confirm without any fear of contradiction that the circumstances have drastically changed and there is no likelihood that the public will harm the accused if he is released on bail.

4. In the other affidavit by the accused, he contends that the circumstances of the homicide “*disclose a charge of causing death by dangerous driving and in a worst case scenario an offence of manslaughter*”

5. Neither the accused nor his brother makes *any* mention of an *illness*. I thus readily find that the allegation that the accused is ailing or requires urgent medical assistance is not backed by evidence.

6. Whether or not a charge of *murder* will be made out is too early to call. Whether the homicide was *intended* or a simple *manslaughter* will be borne out by the evidence at the trial. I decline the invitation to pre-judge the matter.

7. The court in the impugned ruling of 20th December 2018 observed as follows:

[8] *The accused is charged for the unlawful killing of Lydia Njoki Ngugi on 4th August 2018 at Kabati Kaguduini, Kandara Sub-County.*

[9] *The social report concludes as follows-*

The circumstances of his arrest were characterized by aggression...it took the intervention of the police to rescue and safeguard him though part of his family opined that his security would not be at stake...there is a strong indication that he may suffer harm from members of the community if released on bond. The victim's family on the other hand was left devastated and her children orphaned. [Ephasis added]

[10] *There is palpable anger at the victim's home. The **Victims Protection Act 2014** requires the views of victim's family to be taken into account at this stage.*

[11] *I empathize with the accused. But I have reached the conclusion that his safety is not guaranteed at the locus in quo. That to me is a compelling reason not to release the accused on bail.*

8. The accused and his brother now depose that there is no hostility at the *locus in quo*. But there is no *independent* confirmation. Nothing would have been easier than to request for a fresh social report to confirm the reality on the ground. The original reasons for denial of bail remain valid. There is no *new* or *cogent* evidence showing that the ground has shifted in favour of the accused.

9. The upshot is that no good cause has been shown for review. The application by the accused dated 22nd February 2019 is *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 29th day of October 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Accused.

Mr. Mwaniki holding brief for Mr. Njoroge for the accused.

Mr. Mutinda for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.