



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 46 OF 2018

LESITT, J

REPUBLICPROSECUTOR

V E R S U S

ZACHARIA OKOTH OBADO.....1ST ACCUSED

MICHAEL JUMA OYAMO.....2ND ACCUSED

CASPAL OJWANG OBIERO.....3RD ACCUSED

RULING ON BAIL

1. This is a Ruling on two Notices of Motion applications dated 5th October, 2018, and 27th September, 2018, by the 1st and 3rd Accused respectively; and written submissions by the 2nd Accused dated 5th October, 2018, all seeking bail pending the trial of the Accused persons. The Applications were premised on various provisions of the **Constitution** and the **Criminal Procedure Code**.
2. The Motions by the 1st and 3rd Accused are supported by Affidavits sworn by themselves. In addition, all Accused filed Replying Affidavits in response to the Affidavit filed by the mother of the deceased one **MELIDA AUMA RANGILI**, hereinafter referred to as the victim.
3. The Respondent, through the Director of Public Prosecutions (DPP), opposed the Applications. The Respondent has filed Replying Affidavits sworn by **NO. 236734 DET. IP CLEMENT MWANGI**, dated 26th, and 27th September, 2018.
4. The victim in her Replying Affidavit dated 6th October, 2018 opposed the Applications to have the Accused persons released on bail.

FUNDAMENTAL RIGHTS AND PRINCIPLES

5. The 1st Accused in this case had earlier on made an application to be released on bail. Mr. Ombija for the 1st Accused adopted all the submissions made in that application, in particular the substantive and procedural law applicable to the application, as spelt out under **Article 165(2)(b)** and **49(1)(h)** of the **Constitution**, and **sections 123** and **123A** of the **Criminal Procedure Code**.
6. Mr. Amollo for the 2nd accused relied on the affidavit sworn by the 2nd Accused and adopted the filed written submissions. He urged that the on the issues of right to bail the position is that once plea is taken, it is the duty of the court to tell the accused that he has a right to bail and then invite the prosecution to give compelling reasons and that on this, the court has no discretion.
7. Mr. Amollo urged that **section 123** and **124** of the **Criminal Procedure Code** employs the word “**may**” which conflicts with the present **Constitution** and therefore gives court discretion to deny bail. He urged the court to read those sections excluding the word “**may**”.
8. Mr. Ondari for the Prosecution urged that the prosecution opposes the bail applications, and that the prosecution has filed affidavit evidence detailing grounds of opposition. Mr. Ondari adopted the earlier submissions which resulted in this court’s ruling on the 27th September, 2018.
9. Mr. Ondari submitted that they alluded to the fact that bail is not an absolute right, not that it was not available. He stated that the only rights that are absolute are the ones under **Article 25** of the **Constitution**, and as such, it was not right to say that bail is available as a right.

10. Mr. Ondari submitted that the prosecution had cited several grounds for denial of bail, including: seriousness of offence, severity of the punishment and interference with witnesses, all which are factors to consider. He relied on the case of ***Republic v. Fredrick Ole Leliman and Others (2016) eKLR***. He also relied on grounds under paragraph 105 of the **Criminal Procedure Code Bench**. He urged the court to balance the rights of the Accused with the public interest.

11. Mr. Muteti for the Prosecution argued under **Article 49(1)(h)** the court has discretion to grant or deny bail. To support that proposition he cited the cases of ***Babu Singh and Others v. The State of UP, Criminal Appeal No. 274 of 1977 in the Supreme Court of India*** and ***Republic v. Danson Mgunya & Another (2010) eKLR***. He urged that the burden of proof is on a balance of probabilities and that since nothing had been presented to displace what the prosecution had presented thus the bail applications must fail.

12. I do not wish to say much on this save say that the general principles applicable are well settled. They include the right of the accused to be presumed innocent; Accused right to liberty; Accused obligation to attend trial; Right to reasonable bail and bond terms; Bail determination must balance the rights of the accused persons and the interest of justice and consideration for the rights of victims.

COMPELLING REASONS

13. On compelling reasons, Mr. Abisai for the 2nd accused submitted that the prosecution had not given the court any compelling grounds not to grant bail, that all they did was to rely on the affidavit filed by the witness. He added that the investigating officer's affidavit had a blatant falsehood at paragraph 23 which states that the 2nd accused is the governor of Migori County and no attempt was made to correct that and that if they could lie on such a basic fact, what else could they be lying about.

14. Mr. Abisai submitted that much of the evidence of the prosecution is hearsay and compelling reasons is different from what will be prosecuted at trial. For that proposition he cited ***Republic v. Danson Mgunya & Another (2010) eKLR***.

15. On compelling reasons, Mr. Ondari faulted counsels for the defence urging that they seemed to want to have their cake and eat it too as they argued that the prosecution must give compelling grounds to deny bail and also place evidence before court. Counsel urged that since the prosecution had presented samples of evidence, they have made an about turn and say that the prosecution ought not to present evidence. He urged the court not to entertain such argument.

16. Regarding the argument of the defence that the accused have families, wife and children, Mr. Ondari submitted that this was no ground to be released on bail. He urged that the prosecution had shown that there was reasonable suspicion that all accused committed the offence they are charged.

17. In my earlier ruling to the 1st accused's application for bail I stated, in regard to what constitutes compelling reason, which I adopt here thus:

“In the recently launched Criminal Procedure Bench Book, paragraph 105 has been dedicated to outlining compelling reasons as stated in various cases, policy guidelines and others. These are; likelihood accused may fail to attend court; may commit or abet the commission of a serious offence; endanger the safety of victims; interfere with witnesses or evidence; endanger national security or public safety; and protection of the accused person.”

RIGHT TO PRESUMPTION OF INNOCENCE

18. Mr. Ombija urged that at this stage, the accused is presumed innocent and that the court has received committal bundles in which the 1st accused has not been mentioned directly in crime; that the 1st accused was arrested due to public pressure and has since cooperated with the police at every stage and he undertakes not to interfere with the investigations or witnesses. Further, his incarceration has led to untold suffering to himself, his family and his county where he is the Chief Executive.

19. Mr. Sagana also for the 1st accused urged the court to find that liberty is in the heart of the Constitution and our justice system and is also embodied in other rights of presumption of innocence and rights to bail. He urged the court to uphold those rights by granting bail.

20. Right to bail is a constitutional right. However, it is not an absolute right. Furthermore denying an accused bail is not a derogation of that right.

MANDATORY DEATH PENALTY AND THE RIGHT TO BAIL

21. Mr. Ombija stated that murder is a serious offence but that following the Murueteu case death penalty is no longer a mandatory sentence.

22. Ms. Angawa for the 3rd accused urged that murder is a bailable offence and that the accused has a right to be released on reasonable grounds; that rights can only be denied where the prosecution has provided compelling reasons to deny bail but that none has been provided so far.

23. Mr. Ondari for the Prosecution in answer to the defence submitted that the argument that murder no longer carries a death penalty was incorrect as the Constitution provides for the death penalty and court could impose the death penalty depending on the case.

24. On this issue the seriousness of a charge and severity of the sentence to be meted out is a major consideration on issues of bail. It is however considered alongside other factors and cannot, standing on their own be a ground to deny bail.

PUBLIC INTEREST, ORDER AND SECURITY

25. On this, Mr. Ombija urged that the accused will not undermine public security and he is not a flight risk. That the main issue is to ensure the accused attends trial and that the amount of bail ordered should not be too large as to deny justice. Further, he urged the court to ignore print and electronic media as they had already tried and convicted the accused even before the case has started.

26. Mr. Sagana referred to 1st accused affidavit to the effect that since 3rd or 4th September, 2018, to date, there has been no disorder, unrest, chaos or breach of peace in Migori County or the country over this matter and also, notwithstanding the then ongoing campaign for Migori Senatorial election and politicization of the 1st accused accusation, arrest and trial, there has been peace in and out of Migori County.

27. Mrs. Ashioya for the 2nd accused submitted that the prosecution contention that bail should be denied on grounds of security of the 2nd accused, that his life will be in danger if he was released. Counsel urged that ground should not be used by court to deny bail. For that proposition counsel relied on the case of ***Republic v. Cyrus Mwangi Kimunyu [2016] eKLR*** where the court stated that denial of bail on the basis of accused security would amount to court endorsing mob justice and it would be a travesty of justice to allow mob justice, and that it is the duty of the state under **Article 26 and 29** of the **Constitution** to provide the 2nd accused with security. Counsel pointed out to the 2nd accused deposition in his affidavit that he does not intend to visit the home area of the victim where there is hostility.

28. The issue of public safety and security is another the parties in this case cannot comment on for lack of material to form a basis for an argument either way. The only material before the court is the affidavit by I.P. Mwangi. It contains averments that security may be destabilized. The court is however aware of threat to security in the area the offence took place and that is what informed the arraignment of this case here in Nairobi.

29. As I observed in my earlier ruling, public safety and security is an issue and the court is aware of threat to security in the area the offence took place and that is what informed the arraignment of the accused persons here in Nairobi.

WHETHER VICTIMS HAVE A ROLE IN BAIL CONSIDERATION

30. Mr. Sagana, reminded the court that in its previous ruling, it had stated that it was difficult for the court to grant bail before the committal bundles were served and gave the 1st accused the liberty to re-apply for bail once the bundles were served. And now that the committal bundles were served, they have since filed another application for bail.

31. Mr. Amollo for the 2nd accused submitted that his client is presumed innocent and that is what needs to be the guiding principle and further, furnishing of committal bundles is a right under the law but the same cannot be used by the court at this point. For that proposition counsel cited ***KENNETH NYAGA MWIGE VS. AUSTIN KIGUTA & 2 OTHERS (2015) eKLR*** where Court of Appeal held; ***“that the mere marking of a document for identification does not dispense with the formal prove. The document has to be produced and the court has to admit the same in evidence and thus it seems part of the judicial record of the case and constitutes evidence”***. He urged that the judgment is binding to this court as the Court of Appeal made it clear that unless evidence is adduced at the trial, it cannot be relied upon to deny bail.

32. Mr. Amollo urged the court to reject the annexed witness statements and evidentiary material, for instance, the post mortem and O.B abstracts annexed in the two (2) affidavits filed by the state and victim. Mr. Amollo urged that the statement of the victim has no place in the proceedings and that the same violates the provision of **section 9(2) and 12** of **Victim Protection Act**; that the only thing a victim is allowed to do is to file a **Victim Impact Statement** and not an affidavit. He urged that in any event, the affidavit of the victim alluded to information she had been told or had discussed with investigation officers.

33. Mrs. Ashioya for the 2nd accused submitted that the affidavit filed by the prosecution and the annexures therein gave evidence supposed to be adduced at the trial and so they cannot be used by the court at this stage as they offend **Article 50(k)** which provides for the right of the accused to challenge evidence adduced by the prosecution; that the accused can only challenge the same at trial after evidence and during cross-examination and so the same cannot be used to deny bail. Ms. Angawa stated that nothing in the committal bundles, documents or statements draws a nexus between the 3rd accused and the crime he is accused of.

34. Mr. Muga for the 3rd accused submitted that the affidavits of both the investigator and the victim invited the court to look at the evidence in order to execute discretion to grant or deny bail. He submitted that the same does not hold water because the **Constitution** guarantees the presumption of innocence until proven guilty. He relied on the decision of ***Republic v. Danson Mgunya & Another (2010) eKLR***, in which it was stated that evidence supported by the charge ought not to apply at the bail application stage, in the face of **Article 50**. He urged that the two (2) affidavits should be ignored and disregarded for purporting to invite evidence at this stage. He urged that even if the court were to look at the statements, the court will note that there is no mention of the 3rd accused and no confession as alluded to earlier is annexed in the bundle.

35. Mr. Ondari for the Prosecution in response submitted that the fact that an accused has not been mentioned anywhere in the statements so far provided directly, does remove the fact that a case can be proved under circumstantial evidence. Mr. Ondari urged that the prosecution has not submitted any committal bundles to the court and that the court will not determine bail on the basis of witness statements and on evidence but through the evidence present in the affidavits.

36. Ms. Kamau for the victim with regard to the challenge to the inclusion of the victim's affidavit submitted that **section 4(2)(b)** of the **Victim Protection Act** stipulates that at every juncture before a decision is made, inter alia on bail, a victim must be given an opportunity to respond. Counsel urged that the cases that have been referred to in this court are distinguishable; that this is different to **Victim Impact Statement** and ought to be distinguished as described in **section 2(1) and section 12(1)** of the **Victims Protection Act** which restricts the statement to sentencing stage.

37. Ms. Kamau submitted that **section 19(1)** of the **Victim Protection Act** as read with **section 9(1)(e)** of the same Act both empower the victim to be supplied with evidence as well as information by the investigation officer in the matter.

38. Prof. Wajackoyah for the victim submitted that the reliance of the victim's affidavit on the investigation officer point of view is covered in the investigation officer affidavit and so it is not new or sinister. He referred to the maxim of equity that requires clean hands at all times. He said that the defence came to denounce the prosecution from relying on evidence and yet they themselves have looked at the evidence; and that they are not being sincere.

39. On his part, Mr. Ombetta for the 1st accused in response submitted that there is nothing like equity in criminal matters. He asked how the court will have an opportunity to look into evidence if the lady responsible for justice is blindfolded with a sword in one hand and weight balances in another; she cannot look into the evidence.

40. Mr. Oroga for the 3rd accused submitted that the prosecution stated that the 3rd accused has not been mentioned anywhere but may substantially be involved. He urged the court to consider the application of the 3rd accused as there were no compelling reasons to hold him.

41. I do not think that there is any need to be-labour this point. I will quote from a decision I made on the issue of Victim Participation in **REPUBLIC VS. LELIMAN & FOUR OTHERS [2018] eKLR** thus:

“25. In Kenya, the place and role of a victim in criminal proceedings has been evolving. Initially, victims were silent observers in court, and were only visible as witnesses and where represented by an advocate through watching brief. In watching brief, counsel lacked the right of audience and could only channel concerns through the prosecution, except in inquests or enquiries where the victims counsel was allowed to cross-examine witnesses.

26. That position has since changed. Developments in the law increased recognition of victims of crime in the trial process. This position was heralded by the Sexual Offences Act which formally recognised the victim in the definition of a complainant as follows:

‘Complainant’ means the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse.’

27. The Sexual Offences Act under section 33 created an opportunity for consideration of statements of victims in determining the commission of an offence and for the determination of an appropriate sentence. Victim impact statements were eventually provided for in the Sexual Offences Regulations.

28. Later amendments to the CPC through Act No. 5 of 2003 introduced victims in the criminal trial process. The Code was more elaborate in providing for an expanded definition of a victim, as well as the place of Victim Impact Statements in the trial process, most notably to inform the court before granting bail and also before passing of sentence. This progression made its way in the law before the promulgation of the Constitution.

29. Section 329A of the CPC defines a victim in relation to an offence as:

“329A Interpretation

In this Part—

“family victim”, in relation to an offence as a direct result of which a primary victim has died, means

a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence;

“member of the primary victim's immediate family” means—

- (a) the victim's spouse;**
- (b) the victim's de facto spouse, being a person who has cohabited with the victim for at least 2 years;**
- (c) a parent, guardian or step-parent of the victim;**
- (d) a child or step-child of the victim or some other child for whom the victim is the guardian; or**
- (e) a brother, sister, step-brother or step-sister of the victim;**

“personal harm” means actual physical bodily harm, mental illness or nervous shock;

“primary victim”, in relation to an offence, means—

(a) a person against whom the offence was committed;

(b) a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned, being a person who has suffered personal harm as a direct result of the offence;

“victim” means a primary victim or a family victim;”

32. The progression in the recognition of victims in the trial process did not end with the amendment of the CPC. A firm position was realized in the recognition of victims in the criminal trial process after the promulgation of the Constitution, 2010. It received constitutional underpinning under Article 50(9) which required Parliament to enact legislation providing for the protection, rights and welfare of victims of offences. It was further given statutory underpinning under the enactment of the VPA in 2014. The enactment of the VPA was deliberately to give effect to Article 50(9) of the Constitution.

33. The VPA codifies the rights of victims in the justice system beyond the trial process. This is evident from a general reading of the preamble to the Act which states:

“An Act of Parliament to give effect to Article 50(9) of the Constitution; to provide protection of victims to crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes”

34. It is not in dispute that a victim has the right to participate in criminal proceedings. Section 4 sets out the general principles that would guide the court in dealing with a question of the rights and welfare of a victim. Section 4(2)(b) in this regard enjoins the court to ensure that :

‘every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;’

35. Section 9(1) elaborates the rights of a victim during the trial process as follows:

‘(1) A victim has a right to —

(a) be present at their trial either in person or through a representative of their choice;

(b) have the trial begin and conclude without unreasonable delay;

(c) give their views in any plea bargaining;

(d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;

(e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;

(f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and

(g) be informed of the charge which the offender is facing in sufficient details.’

36. This provision does not expressly elaborate on the right to actively participate in the sense of presenting or challenging evidence in court. That right is recognised in section 9(2) which also limits the participation to instances where the personal interests of a victim have been affected. The participation must also not prejudice the rights of an accused to a fair trial, and must not be inconsistent with a fair and impartial trial. It reads as follows:

‘(2) Where the personal interests of a victim have been affected, the Court shall—

(a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and

(b) ensure that the victim's views and concerns are presented in a manner which is not—

(i) prejudicial to the rights of the accused; or

(ii) inconsistent with a fair and impartial trial.

(3) The victim's view and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.'

I say no more. It is clear from the recent developments in the law that victims of crime should be given an opportunity to be heard, including on matters of bond as a decision on that issue is likely to affect them. The issue is whether the victim's affidavit addresses what the law envisages. I have looked at the affidavit of the victim in this case and I agree with the defence that to a large extent, it has delved into the arena of evidence based on information from others. The role of the victim at the bail stage is to voice how the likelihood of the accused release on bond will or has affected them. They could also say how the deceased death has changed their lives and can include their attitude towards the likelihood of the accused being released on bond.

LIKELIHOOD OF INTERFERENCE WITH WITNESSES, THREATS AND INTIMIDATION

42. On interference of witnesses, Mr. Sagana referred to paragraph 9 of the 1st accused affidavit, urged that the offence was allegedly committed on 3rd September, 2018, and the 1st accused arrested on 23rd September. Counsel urged that all the 24 witness statements in the bundle were recorded before the arrest of the 1st accused and that there had been no complaint from any of the witnesses of any interference by the 1st accused. He urged that secondly, all the exhibits and committal bundles were secured before the 21st September, 2018, before the arrest of the 1st accused without any hitch from him.

43. Mr. Sagana submitted that a total of six (6) persons were arrested, three (3) of whom were released and three (3) charged; of the arrested, some were both known and unknown to the 1st accused, including employees of the County Government and of the six (6), he was the last to be arrested; and there was no complaint of any difficulty caused in arrest or releasing of the others.

44. Mr. Sagana submitted that the 1st accused recorded two (2) statements in September, 2018, and voluntarily gave his DNA sample and his mobile handset; that the 1st accused gave everything he was asked for to help in the investigations. Regarding allegations of interference with investigations and witnesses counsel placed emphasis on the requirement that the prosecution must give tangible evidence.

45. Mrs. Ashioya for the 2nd accused submitted that the 2nd accused has been in custody for 37 days; that he wrote his statements on 9th September, 2018 at Homabay, and has not been called upon at any stage to write any other statement. Counsel urged that the 2nd accused will not interfere with witnesses and that no evidence has been given to demonstrate that he will interfere with them. Counsel urged that the prosecution has not stated how holding the 2nd accused will aid in investigations.

46. Mrs. Ashioya urged that the affidavit of the victim on an attempted abduction of a relative was not substantiated since the name of the abducted person has not been given.

47. Ms. Angawa for the 3rd accused urged that the 3rd accused obeyed summons and voluntarily presented himself at Oyugis Police Station on 18th September, 2018, when he was required to do so and other persons had already been arrested and most of the witness statements had been recorded. Counsel urged that the prosecution had not shown any evidence that the 3rd accused inhibited any investigations prior to his arrest or any failure on his part to cooperate with them.

48. Ms. Angawa urged that the state is in possession of 3rd accused mobile gadgets as well as other personal effects that were on him at the time of his arrest, including those of his wife. She submitted that the 3rd accused shall not interfere with any further investigations if at all, or the prosecution of the case.

49. Mr. Muga for the 3rd accused submitted that the allegation that the 3rd accused is an employee of the 1st accused was incorrect. Mr. Muga submitted that it is on record that the 3rd accused is an employee of the County Government Board, hence there is no relationship between the 3rd accused and the 1st accused and he urged the court to ignore the same.

50. Mr. Ombetta for the 1st accused concluded by submitting that the prosecution had not shown any evidence that there has been interference with evidence or intention to interfere with investigations. That earlier on they talked of influence of the governor but now they have brought nothing to show how his influence will affect the case. That in all the affidavits they have filed, everything is guess work.

51. Mr. Ombetta submitted that the victim's claim of interference refers to a robbery incident in Nairobi and that there is no mention of the 1st accused's involvement in it. He urged the court to ignore the same.

52. On the whole question of the likelihood of interference with the case witnesses and intimidation this cannot be taken lightly. The Accused persons have been supplied with the witness statements and have the names and contacts of those who have adversely mentioned them in connection with the case. The manner in which the deceased met her death is in the public domain and the evidence has also been provided. I find that given the circumstances of this case the likelihood of the adversely mentioned Accused persons contacting the witnesses can inflict genuine fear and anxiety to them. I think that the mere release of the Accused is sufficient to inflict anxiety and fear leading to intimidation of potential witnesses.

COURT ATTENDANCE DURING TRIAL

53. Mr. Sagana concluded by submitting that the 1st accused was a resident of Rapogi and has six (6) school going children and he is also a

Governor.

54. Ms. Angawa submitted that the 3rd accused deposed that he is a permanent and pensionable employee of the County with a permanent residence and a family that depends on him and therefore is not a flight risk and thus this cannot be used to deny him bail. In addition, he has not received any threats to his person or his family and he shall attend court at all times when required to do so; and that the court should give him reasonable terms.

55. On grounds that the 3rd accused may abscond trial, Mr. Muga urged that it is speculation since the accused has cooperated with investigators and police; that the accused was summoned by the police and he presented himself to them.

56. Mr. Ombetta submitted that when the 1st accused stated that he is married and with children, he was showing that he has ties to this country and has no reason to run away; and the presumption of innocence allows them to go on with his lives.

57. Whether an accused person will turn up for his trial is a primary consideration for grant of bail.

MEDICAL GROUNDS

58. On this, Mr. Sagana referred to the 1st accused affidavit in which he has deposed that he has a severe spinal problem which necessitates him to see a doctor and he relied on an annexed medical record on the same.

59. This is not a good ground to support grant of bail given the admitted fact that the 1st Accused has received sufficient medical support while in remand.

CONCLUSION

60. The Investigating Officer has shown the kind of evidence he has against the Accused persons. At this stage the court has no duty to make any conclusive findings as to the weight of it. The strength of the prosecution case is a primary factor to guide the court in making its decision on bail. In this case the evidence affecting the 2nd and the 3rd Accused has been acknowledged by both of them. They each went further and made responses in their affidavits. It is therefore acknowledged that such evidence exists and cannot be brushed aside.

61. As against the 1st Accused, according to Mr. Ondari the prosecution will be relying on circumstantial evidence. There has been reference made to that evidence in the Investigating Officer's affidavit. At this stage that reference is based on conjecture. It is dangerous to use it now as a ground to deny bail. That is the kind of evidence the court has to test cautiously at the trial.

62. I find that there are compelling reasons not to grant the 2nd and 3rd Accused bail at this stage. I find releasing them may send fear, anxiety to potential witnesses and therefore lead to intimidation of which may adversely affect the case. The likelihood of these Accused absconding cannot be under rated. I also find that their release is likely to disturb public order, peace and therefore public security especially bearing in mind the reaction of the public at the time of their arrest and investigations into this case.

63. In conclusion the court declines to grant the 2nd and 3rd Accused bail.

64. The 1st Accused is granted bail on the following terms:

- 1. The 1st Accused may be released upon deposit into court of cash bail in the sum of Kshs. 5 million.**
- 2. In addition the 1st Accused will provide two sureties of Kshs. 5 million each.**
- 3. The 1st Accused must deposit all his travel documents including his Kenyan, East African and Diplomatic passports which he holds.**
- 4. The court will be at liberty to cancel this bail and bond and to remand the 1st Accused in custody if any of the following conditions, which I hereby set as part of the terms upon which he is released, are breached:**
 - i. He shall not cause an adjournment in this case.**
 - ii. He shall report once a month to the Deputy Registrar of this court.**
 - iii. He shall not go anywhere within 20 kilometers of Homabay County boundary on all sides of that County.**
 - iv. He shall not contact or intimidate, whether directly or by proxy any of the witnesses in this case as per the Witness Statements and other documents supplied by the State to the defence.**
 - v. He shall not intimidate the parents, siblings or other close relations of the deceased.**

vi. He shall refrain from mentioning or discussing the deceased and or this case in gatherings or political meetings.

DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2018.

LESIT, J.

JUDGE