



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO. 2 OF 2017

REPUBLIC PROSECUTOR

versus

LOKAYI LOPETU alias SAMSON LOKAYI KADOMO alias
TEPATUK KACHARTAT alias KABANET MARY AKEMMER
alias APUNETEE MAMKONG.....1ST ACCUSED
JOSEPHAT NG'ETHE NDUNG'U.....2ND ACCUSED
MERERI TETEKOR.....3RD ACCUSED

RULING

1. Whatever is the cause of the invasions, attacks and theft that ranches and small scale farmers in Laikipia County have endured, whether it be due to politics, land disputes or drought, the fact is that it has left a trail of destruction and has instilled fear amongst the people of Laikipia not to mention the many wild-life animals that have been killed.
2. The three accused persons, in this case, are **charged with murder of Tristan Voorspuy deceased**. It is in the public domain that the deceased was the co-owner of Sosian Ranch in Laikipia North. The three accused persons pleaded not guilty. They have applied that they be granted bail pending their trial.
3. **Article 49(1)(h)** of the constitution provides that an arrested person has a right;

“to be release on bond or bail, on reasonable condition pending a charge or trial, unless there are compelling reasons not be released.”

In the case **REPUBLIC –V- MILTON KABULI & 6 OTHERS 2011 eKLR** Justice M. J. Anyara Emukule had this to say on the principal of granting bail:-

“I understand the principal purpose for the grant of bond or bail is to reinforce cardinal principle of the criminal law procedure as is enshrined in Article 40(2)(a) of the constitution that an accused is presumed innocent until the contrary is proved, and unless there are compelling reasons for not doing so, (Article 49(1)(h)), pending such trial to be released on bond or bail.”

4. I will consider each of the accused bail application separately.

5. 1st Accused Lokayi Lopetu alias Samson Lokayi Kadomo alias Stepatuk Kachartat alias Kabanet Mary Akemmer alias Apunetee Mamkong sought that he be granted bail pending his trial. His learned counsel, Mr. Maobe, however other than submitting that he has a right to bail and that he should be presumed innocent until proved guilty did not provide to this court any useful information of the 1st accused which would assist the court make a determination on the bail application. Learned counsel also submitted that 1st accused was a Pokot herdsman then submitted further:-

“A pokot herds-man will be condemned because he is poor.”

6. The bail application was opposed by the Senior Principal Prosecution Counsel Mr. Tanui. Mr. Tanui referred to the investigating officer’s affidavit where it was stated that all the accused persons had no permanent residence and will therefore be a flight risk, if granted bail. Also that if granted bail the security of the prosecution witnesses will be jeopardised.

7. The pre-bail probation report on the 1st accused revealed that he lives a nomadic life whereby he migrated from time to time looking for pasture for his animals. The probation officer, just like the investigating officer, concluded that the 1st accused has no fixed abode.

8. The second accused Josephat Ngethe Ndungu also seeks bail pending trial. The only information the court has on this accused is that which was in the prebail probation report. The accused runs the business of bodaboda in Olmoran area. He originally was from Nyandarua area. The probation report is not entirely clear whether the 2nd accused’s family that is willing to receive him back is the one in Nyandarua or in Olmoran. Similarly the Chief who confirmed the community is receptive to his release it was not clear whether it was from area he either was from nor was it clear what that chief’s name is. That is critical information which is missing and which the 2nd accused himself could have provided.

9. The 3rd accused Mereri Tetkor received a negative report from the probation officer. Whereas the Olmoran community where he was born and brought up is willing to have him released the probation officer, without stating why, state in his report that the 3rd accused portrays a dishonest character and accordingly the probation officer stated that 3rd accused may not abide to his bail conditions.

ANALYSIS AND DETERMINATION

10. In considering the accuseds’ application for bail, and a balancing the facts of this case, the background of the attacks in Laikipia County with the accused’s constitutional right to bail the upper most consideration is whether the accused will appear at their trial. As stated before the accuseds did not supply sufficient information, about their background and family ties which would have assisted this court tremendously. It does not escape my attention that murder charge which the accused face involves the loss of a life. There is therefore a family that was left grieving. I would wish to adopt the words of **Justice K. Ibrahim** (as he then was) now a supreme court judge when he stated in the case **REPUBLIC –V- JOHN KAHINDI KARISA & 2 OTHERS (2010) eKLR:-**

“Murder touches on the social fabric and it affects the security of and peace in the community.”

11. Murder is a serious offence and the chances of one who is charged with murder to take flight to avoid trial is high. It is because of that the court in considering a bail application must be provided with all the relevant facts of the accused – which was not the case with the accused in this case.

12. In respect to the 1st accused the probation officer not only found that he was facing another charge before Nyahururu Magistrate’s court, when he was arrested for the offence of murder, but also state that the accused having no fixed abode was a flight risk. I would add and say that the 1st accused in the course of this case gave different alias totalling five This court had to request the Registrar of Persons to identify the 1st accused’s finger prints and inform the court of 1st accused’s real identity. The Registrar of persons responded through a letter dated 11th April 2017 and disclosed that the names under the Register

of Person under those finger prints was **LOKAYI LOPETO**.

13. The counsel for the 1st accused did not, in making the bail application, explain the aliases used by the 1st accused. The disclosure that 1st accused when apprehended used false aliases is a blot on the 1st accused's application for bail. It is clear that one who uses false aliases is capable of taking flight the moment they are granted bail.

14. On that ground alone the 1st accused's application for bail is declined.

15. Similarly the 2nd and 3rd accused in view of the fact they, through their learned counsel failed to supply evidence or information that they had community ties and would therefore not abscond if granted bail their bail application also fails.

16. At the reading of this ruling a hearing date of this case shall be fixed.

DATED and DELIVERED at NANYUKI THIS 2nd day of AUGUST 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant: Njue

1st Accused: Lokayi Lopeto

2nd Accused: Josephat Ngethe Ndungu

3rd Accused: Mereri Tetekor

For Accused

For the State:

Language

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE