



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

HIGH COURT CRIMINAL CASE NO.21 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

1. **LOKI KATHULE KAINDI.....1ST ACCUSED/APPLICANT**
2. **HELEN MUENI LOKI.....2ND ACCUSED/APPLICANT**
3. **JOSEPH MWAURA NJUGUNA.....3RD ACCUSED/APPLICANT**
4. **SUNSET MUTULI MUNGUTI.....4TH ACCUSED/APPLICANT**
5. **JOSHUA KILONZO WAMBUA.....5TH ACCUSED/APPLICANT**
6. **JUSTUS WAMBUA NGUNDO.....6TH ACCUSED/APPLICANT**

RULING

1. **LOKI KATHURE KAINDI, HELLEN MUENI LOKI, JOSEPH MBUGUA NJUGUNA, SUNSET MUTULI MUNGUTI, JOSHUA KILONZO WAMBUA and JUSTUS WAMBUA NGUNDO** hereinafter “**The 1st - 6th Applicants**” were arraigned in court on the **4th day of April, 2011** having been charged with the offence of **Murder** contrary to Section **203** as read with Section **204** of the **Penal Code**. Having denied the charge, the case was set down for hearing.
2. On the **29th November, 2011** the applicants filed an application seeking to be released on bail pending trial.
3. The application is based on grounds that the applicants have been in custody since they were arrested on the **1st April, 2011**; they are innocent until proven guilty; It is a constitutional right of the accused person to be admitted to bail unless there are compelling reasons for not doing so; the applicants are the only source of livelihood for their families; the **1st** and **2nd** applicants are Man and Wife and so are the **3rd** and **4th** applicants; it would be a travesty of justice for the applicants to remain in custody and later be acquitted; there is no direct or circumstantial evidence to link the applicants to the Murder; the applicants are persons of fixed abode with immovable assets in the republic and are citizens of Kenya.
4. Each applicant deponed an affidavit in support of the application basically reiterating what is stated in the grounds upon which the application is based.
5. The State/Respondent deponed a replying affidavit to the application on the **19th January, 2012** through **No 23114 Chief Inspector Lawrence Wahome** who opposed the applicant’s release on bail for reasons that:

The witnesses in the matter hail from the same family as that of the applicants. The **1st** applicant

who is a husband to the 2nd applicant was an elder brother to the deceased. The 2nd and 4th applicants are biological sisters. The 3rd applicant is a husband to the 4th applicant. Investigations carried out revealed existence of a dispute over property between the applicants and their family.

6. On the **5th June, 2000, Father Lawrence Kaindi** a brother to both the 1st applicant and the deceased was murdered under mysterious circumstances. He died leaving behind various assets.
7. On the **15th June, 2010** the 1st applicant distributed the Estate of **Fr.Lawrence Kavita Kaindi** and excluded the then legal administrator, **Martin Mutuku Kaindi (deceased herein)**. He took possession of shares – namely – **KAMULU M/NO.17782-(12 shares)** and **Kayatta 17782- (5 shares)**. The distribution also contravened the court order dated 12th June, **2001**. On the **23rd July, 2010**, the 1st applicant sold part of the Estate to **Ruth Nduku Munguti**. He received Ksh.830,000 – as the consideration. The deceased as the legal administrator of the Estate engaged services of the firm of **Mulwa, Isika and Mutia** advocates who attempted to stop the sale agreement. The attempt culminated into a bitter dispute between the 1st applicant, the deceased and the entire extended family.
8. On the **2nd September, 2010** the deceased was found a few meters away from the homestead of the 1st and 2nd applicants. Stains of the deceased's blood group were found close to their doorstep. Most witnesses are their Relatives whom they are likely to interfere with if released on bail. He concluded by stating that the applicants also pose a high flight risk.
9. The application was not argued until the 4th day of June, 2015. It was canvassed by way of written submissions.
10. In his submissions counsel for the applicants, Mr. Wambua Kilonzo, argued that the applicants are innocent until proven guilty and it will be a travesty of justice for the applicants to continue languishing in remand and eventually be acquitted. They have families and do not pose a flight risk and will not interfere with the witnesses.
11. The Prosecution Counsel Mrs Abuga on the other hand urged the court to consider the nature of the offence, the temptation to abscond and influence witnesses and the public interest. Relying on the affidavit deposed by **Chief Inspector Lawrence Wahome**, she called upon the court to deny the applicants bail.
12. According to **Article 49(1) (h)** of the Constitution, bail pending trial is not absolute. If there are reasons necessitating denial of bail then the Applicant/Accused person must be incarcerated pending trial.
13. The primary consideration in determining whether or not an accused person should be released on bail is whether the person will turn up for trial (**see Watoro v Republic (1991) KLR 220**).
14. However, there are other factors that the court should take into consideration namely:
 - The nature of the charge
 - The strength of the prosecution's case
 - The likelihood of the accused to interfere with witnesses
 - The gravity of the punishment in the event of conviction
 - Detention for protection of the accused:

(see Mogotsi and Another -vs- The State (1990) BLR 142 (HC) Republic –vs- Danson Mgunya and another (2010) eKLR)

- 15.The charge herein is Murder which is grave as it attracts a death sentence in case of a conviction. Depending on the circumstances of the case, it may be an incentive to abscond.
- 16.It has been demonstrated that there was acrimony amongst the 1st, 2nd, 3rd and 4th applicants' extended family following the death of their Priest Kin which is alleged to be linked to the commission of the instant offence. Evidence adduced in this case cannot be dismissed as tenuous. Although the aforementioned applicants have fixed abode, their continued incarceration may be preferable for purposes of protection as it has been established that there is hostility in the family. In case of the 5th and 6th applicants their places of residence are unknown.
- 17.Taking all these into consideration I find that the prosecution having demonstrated existence of compelling reasons requiring the applicants incarceration pending trial.
- 18.Consequently I decline to grant bail. The application is dismissed.

DATED and SIGNED at KITUI

L.N. MUTENDE

JUDGE

DELIVERED at MACHAKOS this 21st day of October, 2015.

P. NYAMWEYA

JUDGE