



**Republic v Kangethe & another (Criminal Case E010 of 2024)
[2024] KEHC 5723 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E010 OF 2024
PN GICHOHI, J
MAY 23, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SAMMY KANGETHE 1ST ACCUSED

JOHNSON MWANGI NGOTHO 2ND ACCUSED

RULING

- Sammy Kangethe and Johnson Mwangi Ngotho (herein referred to as the 1st and 2nd respectively) are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 27th day of February 2024 at En- Nganga Village , Lanet in Nakuru North Sub- County within Nakuru County murdered Elsie Waithera.
- Each of them denied the charge and a plea of “Not Guilty” was entered. Immediately after the plea, Mr. Kihara for the State orally opposed bond on the grounds that the two accused persons were taken to the Police Station by the family members and members of the public who were furious and saying that accused persons should not go back to the society.
- They warned the police not to release the accused persons otherwise they will be harmed. This led the Prosecution to urge the Court not to grant them bond at the moment as their security on the ground is not guaranteed.
- Mr. Opondo for the 1st accused oppose that application on the grounds that if there are such threats, then police should ensure the security of the accused persons once released on bond. He urged the Court to release the accused persons on reasonable bond terms.
- On her part, Ms Ngugi for the 2nd accused urged the Court to grant the him bond as there is no evidence that the accused’s life will be in danger if he is released.



6. The Court therefore called for a pre- bail report in respect of each accused persons. In regard to 1st Accused (Sammy Kangethe), the Probation Officer Salim A.G indicated in his report dated 09/04/2024 that according to the community, the 1st Accused has criminal record of theft against the family property . That he is also known to abuse bhang .
7. The probation officer could not confirm the 1st accused's fixed abode making him a flight risk. Further the family indicated that the matter in court involves the same family where they referred to each other as cousins. That the 1st accused's family has also declined to secure surety bond for him on the grounds that the matter still hurts them.
8. Further, the local authority intimated to the Probation Officer that the Community expresses hostility against the accused and have intention to lynch him . That the community has eagerly been following the matter and attending court and word has gone out that the accused person may be released on bond and this exposes the accused to danger.
9. In regard to the 2nd Accused (Johnson Mwangi Ngotho), the Probation Officer termed him as of low flight risk. However, the mother of the deceased says that the matter is still very fresh and she is yet to come to terms with the death of her 3-year-old child (victim). On behalf of her child, she wants justice done.
10. Regarding the Community, the Probation Officer states that the villagers are very alert on the matter and had threatened to burn down his parents' home which means the accused would not be safe if released to the community as they are still bitter.

DETERMINATION

11. This Court has considered the arguments by the parties herein. It is trite that bond is a constitutional right to an accused person charged before court. However, that right is not absolute. It can be limited or denied where “there are compelling reasons not to be released.”
12. The issue then is whether there are compelling reasons to deny them bond. Such reasons include that:-
 1. The accused is a flight risk.
 2. The accused is likely to interfere with witnesses.
 3. The accused's life would be in danger if he is released.
 4. The accused person is likely to endanger peace and national security.
 5. It is in the public interest that the accused person be denied bond.
13. It is noted that what comes out in the reports concerning each of accused persons is that the 1st accused is a flight risk while the 2nd accused is of low flight risk.
14. However, what is glaring is the hostility on the ground posed by both the community and the families as this is said to be a matter involving same families.
15. The material before Court shows that there are real threats to the lives of both accused persons. Under Section 123 A of the Criminal Procedure Code, and for their own safety, the accused persons should be kept in custody.
16. In the circumstances , the Court makes the following orders:-
 1. Both accused persons are denied bond.



2. The accused persons be and are hereby kept in custody for their own safety at the moment.

Dated, signed and delivered at Nakuru this 23rd Day of May, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kihara for the State

1st and 2nd Accused

Mr. Opondo for 1st Accused

Ms. Ngugi for 2nd Accused

Ruto , Court Assistant

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