



**Republic v Langat & another (Criminal Case E001 of 2023)
[2023] KEHC 1536 (KLR) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E001 OF 2023
F GIKONYO, J
MARCH 8, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

HILLARY KIPKURUI LANGAT 1ST ACCUSED

GILBERT KIPYEGON LANGAT 2ND ACCUSED

RULING

1. The accused persons herein are facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. They applied on January 31, 2023, through their defense counsel to be released on bond.
3. Mr Wafula argued in court that, despite the affidavit by IO, bail is the right of the accused persons. According to him, the affidavit does not raise compelling reasons to deny them bail. He stated that, they are family men and outstanding members of the community. That they will never abscond. And should not, therefore, not be punished through remanding them.
4. Ms Moranga stated that the affidavit states that recording statements may be tampered with. To him, the statements have been recorded and supplied to the defense. Therefore, there is no possibility of interfering with witnesses.
5. Mr Okeyo, the prosecution counsel, stated that paragraph 5 of the affidavit relates to interference with witnesses and not extraction of evidence. That the witnesses are in danger as per paragraphs 6 and 8.
6. The prosecution filed an affidavit to oppose the bond, sworn on January 20, 2023 by PC Linus Talam. The deponent stated reasons they believe constitute compelling reasons not to release the accused on bond, to wit: -



- i. Witness interference -that the accused persons are likely to interfere with the witnesses, most of whom are close relatives for instance Wilson Chamtany (uncle), Richard Chamtany (their father), Faith Chelangat (wife of E-1) and Gladys Too who is a close neighbour. All these witnesses happen to live in the same village as the respondents.
 - ii. Flight risk- the accused persons have no fixed abode.
 - iii. Safety and security of the accused- - that the two respondents surrendered themselves at Emurua Dikirr police station instead of Abossi police station or Njipship police post upon learning that the deceased had passed on fearing for their lives. Further that there is a lot of tension in the village from the relatives of the deceased and if the respondents are released on bond, they are likely to be attacked and get injured.
7. The respondents did not file any replies.

Analysis And Determination

Right to bail

8. All persons charged with a criminal offence are entitled to be released on bond on reasonable conditions except where there are compelling reason not to be so released (art 49(1)(h) of the [Constitution of Kenya, 2010](#)). This is on the premise of the right to be presumed innocent until the contrary is proven ([R v Richard David Alden](#) (2016) eKLR.)

Compelling reason and burden of proof

9. The law places the onus of proving compelling reasons upon the prosecution- these are reasons that justify the limitation of the right to liberty in the context of article 24 of the [Constitution](#).

Objective of bail

10. The overarching objective of bail is to ensure the accused gets his liberty but also attends his trial. However, in granting bond the court should ensure that the accused does not prejudice the trial ([Muraguri v Republic](#)).

Grounds for objecting bond

11. The prosecution cited three grounds on which they opposed bail; i) likelihood of absconding or flight-risk; ii) safety and security of the accused persons; and iii) witness interference.
12. I will take each in time.

Flight risk.

1. In his affidavit, PC Linus Talaam averred that the accused persons have no fixed abode.
2. Counsel for the accused persons has stated that the accused persons are family men and outstanding members of the community. That therefore they will never abscond.
3. The statement by the prosecution is neither here nor there, and is devoid of any supporting evidence. Merely stating that an accused person has no place of abode is not a compelling reason except with cogent evidence. I reject it.



Safety and security of the accused persons.

4. The investigating officer in his affidavit stated that the two respondents surrendered themselves at Emurua Dikirr police station instead of Abossi police station or Njipship police post upon learning that the deceased had passed on fearing for their lives. Further that there is a lot of tension in the village from the relatives of the deceased and if the respondents are released on bond, they are likely to be attacked and get injured.
5. The defense has not responded to this ground.

Taking the law into own hands

6. Although it is my strong view that the ground that the accused persons are likely to be attacked and get injured if released on bond should never be encouraged to be a ground for denial of bail; lest it should inadvertently promote or condone violence, disorder, and usurping of law by individuals or group of people; it may not be appropriate to test the waters with the life of the accused especially where the victim is a member of their own family. In such case, it may be imprudent to release them to go back to the same family they injured.

Interference with witnesses

1. A more potent ground, if proved, is the prosecution's allegation of likelihood of interference with prosecution witnesses. See *R v Patius Gichobi* that proven interference with witnesses was an affront to the administration of justice and therefore a compelling reason contemplated by Article 49 (i) (h) of the *Constitution*.
2. See also a work of court in *R v Jaktan Mayende & 3 others*, that:

“...In all civilized systems of court, interference with witnesses is a highly potent ground on which the accused may be refused bail. It is a reasonable and justifiable limitation of right to liberty in law in an open and democratic society as a way of safeguarding administration of justice; undoubtedly a cardinal tenet in criminal justice, social justice and the rule of law in general as envisioned by the people of Kenya in the Preamble to the *Constitution of Kenya 2010* Threats or improper approaches to witnesses although not visibly manifest, as long as they are aimed at influencing or compromising or terrifying a witness either not to give evidence, or to give schewed evidence, amount to interference with witnesses; an impediment to or perversion of the course of justice...if the interference is aimed at impeding or perverting the course of justice, and if it is so found, it is a justifiable reason to limit the right to liberty of the accused.”
3. Accordingly, the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence as to persuade the court to deny the accused bond (*R v Dwight Sagaray & 4 others*, 2013 eKLR)
4. The prosecution claims that some of the witnesses are close relatives of the accused and are likely to be interfered with by the accused. The witnesses have been listed as uncle, father of the accused and wife of the deceased.
5. These are victims of the crime which bring to the fore the duty of the court to uphold the rights of victims.



6. According to Section 10 of the [Victim Protection Act](#) No 17 of 2014: -

10 (1) a victim has a right to: -

- (a) Be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- (b) Have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- (c) Have their property protected.

7. It is not far-fetched or unfounded that, the presence of the accused amidst such close members of the family who are witnesses against them, make them vulnerable to harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons. It is highly possible that such witnesses may resign to fear and may not give evidence or give skewed evidence to avert unpleasant repercussions.

8. It is therefore, appropriate that these victims should be free from harm, intimidation, harassment, fear, tampering, blackmail and abuse by the accused persons; a right under section 10 of the [Victims Protection Act](#). It is not also lost to the court that the safety of victims is to be taken into account in determining bond issues.

9. A close neighbor as is the case here is not in any better situation.

10. Consequently, I find that the prosecution has proved that the accused are likely to interfere with witnesses herein.

11. I note that counsel for the accused persons submitted that there is no possibility of interfering with witnesses since statements have already been recorded. The court takes the view that mere fact that statements have been recorded is not a guarantee for non-interference with witnesses. Interference with witnesses goes beyond the recording of witness statements.

12. In light thereof, the court must ensure that the integrity of the trial is not prejudiced by acts of interference with witnesses by the accused persons. Integrity of the trial guarantees fair trial ([R v Fredrick Ole Leliman & 4 Others](#), Nairobi Criminal Case No 57 of 2016 (2016) eKLR and [K K K v Republic](#) [2017] eKLR)

Conclusion And Orders

13. In conclusion, I find there is a compelling reason not to release the accused persons on bail. They will remain in custody during the hearing of the case. In light thereof, I direct the hearing of the case to be fast-tracked.

14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 8TH DAY OF MARCH, 2023**

F. GIKONYO M.

JUDGE

In the presence of:

Accused persons

Okeyo for DPP



Moranga for 1st accused

Wafula for 2nd accused

Kasaso - CA

