



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 6 OF 2020

REPUBLIC.....PROSECUTOR

VS.

BRIAN KABENA MWANIKI.....ACCUSED

RULING

1. **BRIAN KABENA MWANIKI** is charged with two counts of murder. He is accused of having murdered two children one of whom was a child of his ex-girlfriend and another was a nephew of the first deceased child. He pleaded not guilty to both counts. He has applied to be released on bail pending trial.

2. The pre-bail probation report reveals that the accused is 26 years old. He is unmarried and was living with his mother who is estranged from his father since the year 2017. The accused's family is willing to have the accused at home and prays for his release on bail.

3. The victim's families objected to the release of accused on bail. Both of the deceased children were attending school in standard one. The victim's family are bitter towards accused.

4. The prosecution is opposed to accused being released on bail. The investigating officer (I.O.) by his affidavit dated 5th March, 2021 stated that there are compelling reasons why accused should not be granted bail. I.O. deponed that members of public went to accused home on learning of the offence and on not finding him, they set his house on fire. That even now the public are irate due to the killing of deceased. Further, the I.O. deponed that the mother of one of the deceased children received threats to her life through Facebook, which threats she reported to the police. A copy of the occurrence book (O.B.) showing the report of those threats was attached to the I.O.'s affidavit.

5. The accused learned counsel cited the case of **REPUBLIC VS. DANFORND KABAGE MWANGI (2016) eKLR**. Although learned counsel cited that case to support his argument that threats towards an accused is not sufficient reason to deny him bail, my reading of that case is contrary to those submissions of counsel. The court in **REPUBLIC VS. DANFORND KABAGE MWANGI** (supra) considered the criteria articulated in several decisions and set them out as follows:-

“i. Risk that the accused will interfere with the course of justice while on bail (e.g. that he will destroy evidence that could be used against them at their trial or that they could interfere with witnesses who are due to give evidence at their trial);

ii. Risk that the accused will commit further offences while on bail;

iii. The accused would be at risk of harm (from himself/herself or from others) against which they would be inadequately protected if released on bail; or

iv. Risk to the preservation of public order if the accused is released on bail.

At least one or more of the above grounds ought to be proved to the satisfaction of the court. Mere allegations or possibility is not enough. Bail cannot be refused simply because the accused has been charged with a very serious offence; but the seriousness of the offence can be taken into consideration as a factor in determining if one of the grounds for refusing bail exists (e.g. the seriousness of the offence may increase the risk that the accused will fail to appear for their trial).”

6. It will be noted that the court in the above case stated:-

“Possible rejection of the accused by the community or family may also be relevant factor.”

7. I have considered the affidavit evidence and submissions made before me. Before conviction the accused is assumed to be innocent. The accused is also entitled to be released on bail unless there are compelling reasons. Bearing in mind what the I.O. stated under oath I make a finding that there is just cause to deny accused bail. I will deny the accused bail and order that he continues to be detained in custody in order to prevent him from interfering with the administration of justice and in order to avoid harm to himself by the irate public.

DISPOSITION

8. The bail application is declined.

RULING DATED AND DELIVERED AT KIAMBU THIS 15TH DAY OF APRIL, 2021.

MARY KASANGO

JUDGE

Coram:

C/A: Kevin

Accused: Present

For the Accused: Ms. Njuguna

For the Prosecution: Ms. Kathambi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE