



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. E001 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MWANGI GITAU.....1ST ACCUSED

DANIEL NDUNG'U GITAU.....2ND ACCUSED

RULING

1. The two accused persons pray for bail pending trial.
2. The Director of Public Prosecutions opposed the application on the basis of the findings in each of the two pre-bail reports filed by the Probation Officer on 20th April 2021.
3. The application was also contested by the family of the victim through their counsel, *Mr. Mbiyu Kamau*.
4. Learned counsel for the accused, *Mr. Mbue Ndegwa*, submitted that notwithstanding the charge, the accused are still deemed innocent. He challenged the conclusions by the Probation Officer on three fronts. Firstly, the mere fact that there is a suspect at large should not be blamed on the accused. Secondly, the accused have been in custody and there is no evidence that they are behind the threats to the victim's family. Thirdly, the applicants are willing to relocate from the *locus in quo* which mitigates the claim that their security would be in jeopardy or that they are likely to interfere with witnesses. In a synopsis, he opined that there are no compelling reasons for denial of bail.
5. The overarching objective of bail is to ensure the accused *attends* trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
6. It is a truism that the accused is presumed *innocent*. Under **Articles 49 (1) (h)** and **50** of the **Constitution**, an accused person is entitled to bail *unless* there are *compelling* circumstances.
7. Other relevant matters to be considered by the court include: The nature of the charge; the likely sentence; previous criminal records; the views of the family of the victim; the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
8. The **Victims Protection Act 2014** also requires that the views of victim's family be considered at this stage.
9. The accused are jointly charged *murder*. The Director of Public Prosecutions informs the High Court that on the 29th December 2020 at Gathimi village, Iganjo Sub-Location, Murang'a South Sub-County within Murang'a County, they jointly with another not before the court they murdered *George Muriigi Kirera*.
10. The two pre-bail reports do *not* recommend for their release. I find that the allegations that the accused persons are a flight risk are not backed up by clear evidence. The 1st accused presented himself to the police. The circumstances under which the 2nd accused was arrested are not clear at this stage.
11. The 1st accused works in Nairobi and awaiting graduation from college. He has a young family. The 2nd accused is unmarried and was working as a casual labourer in Kikuyu. The suspect who is at large is their *mother*. It is not clear at this stage who has been issuing threats to the victim's family. But I cannot shut my eyes to the fact that *three* reports have been made to the police by the victim's family who are potential *witnesses*. I cannot then say that the fears by the victim's family or some witnesses are completely unfounded.
12. Furthermore, and as detailed in the two social reports, there remains a risk of violence which could endanger the *security* of the accused. I am alive that some of these issues could be ameliorated through a witness protection programme. But none has been put in place so far. In

the absence of a suitable deposition, the proposed relocation of the accused is also uncertain.

13. In the end, I find that there are *compelling* reasons for denial of bail. Bail is refused. I however direct the Deputy Registrar to allocate a date *on priority* for this case.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 13TH DAY OF MAY 2021.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of-

The 1st and 2nd accused.

Mr. Mbue Ndegwa for the accused.

Mr. Sebastian Mutinda for the Republic.

No appearance by counsel watching brief for the victim's family.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.