



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. 32 OF 2020**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MICHAEL KARIUKI MAMBO.....1<sup>ST</sup> ACCUSED**

**SAMUEL MWAURA GIATHI.....2<sup>ND</sup> ACCUSED**

**SIMON KANYORA NJOROGE.....3<sup>RD</sup> ACCUSED**

**RULING**

1. **MICHAEL KARIUKI MAMBO (1<sup>ST</sup> Accused), SAMUEL MWAURA GIATHI (2<sup>nd</sup> accused), and SIMON KANYORA NJOROGE, (3<sup>rd</sup> accused)** are charged with the offence of murder. They all pleaded not guilty. They are presently in pre-trial detention awaiting their trial. Their trial date has not been set.

2. The State does not oppose the bail/bond application for the 1<sup>st</sup> accused. The State however opposes the application of the 2<sup>nd</sup> and 3<sup>rd</sup> accused on the sole ground that on the commission of the alleged offence on 4<sup>th</sup> August, 2020, the 2<sup>nd</sup> and 3<sup>rd</sup> accused relocated from their residence only to be arrested on 20<sup>th</sup> December, 2020.

3. The investigating officer (I.O.) in this case stated in his affidavit dated 19<sup>th</sup> January, 2021 that he went to the 2<sup>nd</sup> accused home on 4<sup>th</sup> August, and again on 10<sup>th</sup> September, 2020 but the 2<sup>nd</sup> accused was not at his home. That the Investigating Officer later arrested the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons in December, 2020.

4. The release of all accused persons is also opposed by the victim's family through the affidavit dated 29<sup>th</sup> October, 2002, *Mugeche Gachau*. By that affidavit, *Mugeche*, a brother of the victim stated that the accused and others at large have threatened the State prosecution's witnesses. He did not elaborate how the threats had been communicated other than stating that there had been a telephone call made to him which phone call was made by a lady who threatened him.

5. *Stephen Njenga Gachau*, also a brother of the victim swore that he had been threatened through yet another phone number.

6. One of the phone numbers alleged by those brothers of the victim as being used to threaten them is a phone number of the probation officer who had been requested, by the court, to carry out the pre-bail inquiry and to prepare a report to assist the court determine the bail application.

7. I have considered the opposition, both by the State and the victim's family and I find that those oppositions are not valid to deny the accused right to be released on bail/bond. Although the Investigating Officer stated the 2<sup>nd</sup> accused had relocated from his residence after the offence was committed, he failed to inform the court how he formed that opinion. In other words, did he only go to 2<sup>nd</sup> accused's home once on the two dates he gave? If he only went once, the question that arises is, how can the 2<sup>nd</sup> accused be expected to stay at his home when he had not been informed the Investigating Officer would visit his home. How then can he be blamed for not being at his home when he had no prior knowledge of such visit. From the Investigating Officer's affidavit, it is clear that the 2<sup>nd</sup> and 3<sup>rd</sup> accused were arrested in December, 2002 at their home. Similarly, the victim's family make sweeping allegations against accused persons alleging they have threatened them and other State witnesses. This alleged threat is disproved by the fact that one of the phone numbers they alleged was used to threaten them turned out to be the probation officer's phone number. That probation officer was carrying out a duty given by this Court to make inquiry to

assist this Court determine bail application.

8. All accused have received favourable reports on their release from the probation officers and from the local administration. There is no compelling reason for denying them bail/bond.

9. The consideration of pre-trial release on bail/bond is pervaded by the presumption of innocence before and during trial and until the contrary is proved: See **Article 50(2)(a)** of the Constitution. Having discounted the opposition to the release of accused pending their trial, the only consideration I need to have is, whether the accused will attend the trial when required. I associate myself with what was stated in the case of **REPUBLIC VS. ZIPPOR NZILU (2018) eKLR** as follows:-

***“I associate myself with the view expressed by Muriithi, J in KELLY KASES BUNJIKA VS. REPUBLIC (supra) that:***

***‘It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused person is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his “constitutional right to be granted Bond/Bail on reasonable and favourable terms.’”***

10. Having considered what the local administration had to say on each accused, I have no doubt the accused will attend trial when required.

11. Accordingly, I grant the following orders:-

(a) The accused, **MICHAEL KARIUKI MAMBO, SAMUEL MWAURA GIATHI** and **SIMON KANYORA NJOROGE**, shall be released on their own bond of Kshs.500,000/= and one surety of like sum.

(b) The accused shall not interfere with the prosecution’s witnesses.

**RULING DATED AND DELIVERED AT KIAMBU THIS 3RD DAY OF JUNE, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Ndege

Accused: 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Accused present

For 1<sup>st</sup> Accused: Mr. Soita

For 2<sup>nd</sup> & 3<sup>rd</sup> Accused: Mr. Ngigi

DPP: Mr. Kasyoka

**COURT**

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**