



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E028 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

1. ELIUD NJUGUNA NGANGA

2. GEORGE KIHARA NDICHU

3. JOHN NDIRANGU NGANGA.....ACCUSED

RULING

1. **ELIJAH NJUGUNA NGANGA, GEORGE KIHARA NDICHU and JOHN NDIRANGU NGANGA** are charged with murder to which they pleaded not guilty. They have applied for bail/bond pending trial.

2. They are entitled to be released on bail/bond pending their trial unless there are compelling reasons not to release them. See **Article 49(1)(h)** of the Constitution.

3. The state did not oppose their application.

4. In consideration of bail application, the court should order the terms of bail which would ensure the accused do attend trial and the seriousness of the offence ought to be considered. In those elements were considered in the case **REPUBLIC VS. ROBERT ZIPPOR NZILU (2018) eKLR** as follows:-

5. follows:-

“13. While agreeing with Justice Ibrahim Tanko Muhammad’s judgment, Justice Niki Tobi gave an illuminating and persuasive decision when he said:-

“The main function of bail is to ensure the presence of the accused at the trial... Accordingly, this criterion is regarded as not only the omnibus one but also the most important. As a matter of law and fact, it is the mother of all the criteria. The Working Party on bail procedure in Magistrate’s Courts in the United Kingdom said in paragraph 22 of the Report:-

‘There are a number of other considerations to be taken account in deciding a bail application, but in general they are not in themselves reasons for granting or refusing bail, but indicators of the likelihood or otherwise of the defendant’s appearance.’...”

10. Gravity of the offence as a consideration was appreciated by **Mboghli Msagha, J** in **Criminal Application No. 319 of 2002 Priscilla Jemutai Kolonge vs. Republic** (unreported) at page 3, wherein he held as follows:-

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.’...”

6. In view of the fact there are no compelling reasons to deny the accused bail, I allow the accuseds' application and make the following orders:-

(a) Each of the accused shall be released on their own bond of Kshs.1 million (one million) with two sureties each of them for similar amounts.

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

RULING DATED AND DELIVERED AT KIAMBU THIS 1ST DAY OF JULY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

1ST Accused: No appearance in quarantine

2nd Accused - present

3rd Accused – Present

For 1st Accused: Mr. James Mururi

For 2nd Accused : Mr. Kirimi holding brief for Mr. Irungu

For 3rd Accused : Mr. Kirimi

For DPP: Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE