



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.E043 OF 2021

REPUBLIC PROSECUTOR

VERSUS

JOSEPH MUROKI M'ALAINE Alias AMIN.....1ST ACCUSED

PATRICK KAIYONGI GITONGA.....2ND ACCUSED

RULING

1. On the 15th September 2021, **Joseph Muroki Alias Amin and Patrick Kaiyongi Gitonga (hereinafter referred to as the accused persons) were** arraigned in court to plead to the charge of murder contrary to section 203 as read with section 204 of the Penal Code.
2. After they pleaded not guilty to the said charge, an application by their counsel Mr. Nyakwara for bail pending trial was met with opposition by the prosecution. An affidavit in opposition to bail sworn by the investigating officer, CPL Henry Njuguna, was subsequently filed on 17/9/2021. In the affidavit, the officer asserts that the accused persons will interfere with two of the key prosecution witnesses being the daughter and the estranged wife to the 1st accused. He further asserts that the release of the accused persons on bail will endanger their lives because the community is hostile to the two. According to him, the two other homes allegedly owned by the 1st accused are approximately 200 meters apart, one of which was torched by members of the public.
3. Mr. Nyakwara for the accused persons orally submitted that no compelling reason had been advanced to warrant denial of the constitutional right to bail.
4. I have keenly considered the application, the oral submissions by counsel and the affidavit in opposition to the application. Article 49 (1) (h) of the Constitution provides that an accused person has a right to be released on bond or bail on reasonable conditions pending the trial, unless there are compelling reasons not to be released.
5. The consideration of pre-trial release on bail/bond is founded on the presumption of innocence before and during trial and until the contrary is proved. ***See Article 50(2)(a) of the Constitution.***
6. In this matter, while the prosecution insists and foresees a real threat of interference with the witnesses and the risk of flight, if the accused persons are released on bail, the defence says otherwise and proposes that the accused is prepared to avoid going to the locality the witnesses live. In addition, the investigating officer swore that the security of the accused persons will not be guaranteed, if they are released on bail, because the community is still very hostile towards them. I would find the two allegations to constitute a compelling reason to deny them bail at this stage if the same are incapable of being addressed by appropriate bond terms.
8. Having considered the need to shield witnesses from interference or intimidation, the risk of flight and the safety of the accused themselves from prospects of retaliation, I find that the fears of the prosecution can be adequately addressed by the court imposing appropriate and befitting terms so that the right to bail is balanced with the need to have the case tried without the prosecution's case being prejudiced.
9. For that reason, I do grant to the accused persons bond of Kshs 250,000, each, with surety in the like sum. In the alternative each accused person may be released on cash bail of Kshs 100,000.
10. In addition the accused persons shall never communicate with any of the vicinity of the home of such witnesses which I take to be the area the offence is alleged to have taken place being Igembe Central sub-county. For avoidance of doubt, while the case proceeds, the accused is excluded from the entire territory and shall not visit any part of the Igembe- Central sub-county.

DATED SIGNED AND DELIVERED AT MERU VIRTUALLY VIA MICROSOFT TEAMS THIS

8TH DAY OF NOVEMBER, 2021.

PATRICK J.O OTIENO

JUDGE

In presence of

Mr. Maina for the prosecution

Mr. Nyakwara for the accused

PATRICK J.O OTIENO

JUDGE