REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E022 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

EVANS KARANI WANYAMU..... ACCUSED

RULING

1. This Court by its Ruling dated 6th July, 2021 declined to order the release of ***EVANS KARANI WANYAMU*** on bond or bail pending his trial for the offence of murder. The court declined to release the accused on bond or bail on the basis that it did not have information whether the accused was likely to be harmed by the public if so released.

2. I have considered the affidavit in support of the application. When this Court delivered its Ruling of 6th July, 2021 it did not have the benefit of the pre-bail report. That report is now before court. That report shows that the victim's family is opposed to the accused being released on bond because they are concerned that the safety of deceased's daughter and other family members will be compromised by the accused's release on bond or bail.

3. Although an accused has a righto be released on bond/bail on reasonable condition that right is tempered by discretion given to the court because the court can deny bond/bail where there are compelling reasons. This is what was held in the case ***REPUBLIC VS. MILTON KABULIT & 60 OTHERS (2011) eKLR*** thus:-

> ***"My understanding of Section (sic) 49 (1) (g) (h) is firstly, that the right of an arrested person to bond or bail in respect of any offence is solely at the discretion of the court seized of the application. Secondly, the only accused entitled to a right to an automatic bond or bail are those charged with offences (which may be referred to as "petty offences") the punishment of which if found guilty and convicted) is either a fine only, or imprisonment for a term of less than six months".***

4. The fear expressed by the deceased's family who are potential witnesses in this case is compelling enough to at this moment to deny the accused's application for review.

5. Accordingly, the application dated 21st July, 2021 is declined. The court can, on being moved, reconsider the application once the deceased's family testify at the trial.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

CORAM:

COURT ASSISTANT : MAURICE

FOR DPP :- MS. KATHAMBI/MR. KASYOKA

FOR ACCUSED :- MR. NJEHU

ACCUSED : EVANS KARANI WANYAMU:- PRESENT

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE