



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL CASE NO 8 OF 2019

REPUBLIC.....ODPP

VERSUS

WILLIAM LOPOLIAN & 5 OTHERS.....ACCUSED

RULING

1. **William Lopolian, Joseph Mbugua Njoroge, Duncan Gichuki Irungu, Santos Opiyo, Diba Banchale and Mohamed Kullow Dube** being the 1st to 6th Accused respectively were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 24th day of December 2018 at Huri area in Tsavo East National Park within Tana River County jointly with others not before court murdered **Lami Bocha**.

2. The Accused took plea on 8th April, 2019. They all denied the offence and a plea of not guilty was entered. **Mr. Mouko** appearing together with **Mr. Nyongesa** for all the 6 Accused applied for bond pending trial.

3. The application for bond was highly contested by Mr. Kasyoka learned counsel for the prosecution. In a lengthy reasoned ruling delivered on 8th May 2019 the court declined to grant the accused bail. The court stated:-

‘Having taken all factors into consideration, I am persuaded that the Accused are likely to intimidate and interfere with witnesses and the administration of justice if released. That, I find is a compelling reason not to release the Accused on bail. They shall remain in custody pending trial’

4. Subsequently, the State withdrew charges against the 6th Accused. On 3rd April 2020, Mr. Muoko learned counsel filed the present application under certificate of urgency seeking a review of the court’s ruling on bond. The basis for the urgency was stated to be the outbreak of the corona pandemic which was likely to put the lives of persons in prison custody at risk.

5. The application was certified urgent and the DPP was directed to file a replying affidavit.

6. I have considered the present application on the basis of the supporting affidavit dated 3rd April 2020 sworn by William Lopolian, the 1st accused on behalf of all 5 accused and the replying affidavit dated 8th April 2020 sworn by Joseph Mwangi Kamanu, the learned prosecution counsel.

7. The 1st Accused has averred that their trial has not commenced to enable the vulnerable witness testify which would pave way for a reconsideration of their application for bond as directed by the court. He avers that due to the corona pandemic, there was a likelihood of their safety in prison being compromised and that their respective families would, in the uncertainty of the pandemic be rendered vulnerable without their bread winners. He further deposed that all the accused were willing to abide by any conditions imposed by the court. He prayed that their bond application be reconsidered.

8. In his affidavit sworn on the 8th of April 2020, Mr. Mwangi responded as follows; that the court had issued a well detailed ruling which held that the four prosecution witnesses should testify before the bond issue was reconsidered; that the four identified vulnerable witnesses were yet to testify; and, that the safety of the accused was not at risk as the GK prison was not allowing any persons in or out of the prison facility until the situation was put under control.

Finally, Counsel averred that allowing the application would be a major setback and a travesty of justice.

9. I have considered the application. As stated earlier, the court has in the past considered in depth and rejected the Accuseds’ application for

bond. In so doing, the court gave priority hearing dates for the trial to proceed. The record shows that trial has not taken off expeditiously due to the interlocutory applications filed by the parties. Be that, as it may, the applicants' fears brought about by the current Covid-19 pandemic cannot be ignored. Each case must however be considered on its merits. Indeed, it is true as pleaded by the Accused that the pandemic prompted a prison decongestion exercise. However, such exercise was and continues to be conducted judiciously and targets those with short sentences as well as remand prisoners deserving of bond review.

10. In considering this application, I have taken into account that the Covid – 19 pandemic amounts to new circumstances. I consider it just to review the bond application.

11. I agree with the prosecution that the safety of the witnesses and their protection from any form of threat or interference remains significant in this case. I further emphasise the need to safeguard the integrity of the criminal process. However, I am persuaded that the Accused shall individually and collectively desist from any act or acts that may amount to interference with any witness or threat to the administration of justice in this case.

12. Owing to the circumstances at hand, I allow the application on the very stringent conditions as follows:-

- i. Each Accused is granted a cash bail of Kshs. 500,000/= in the alternative execute a personal bond of Kshs. 500,000 with one surety of similar amount.
- ii. Each Accused shall attend court whenever required.
- iii. Upon release, each Accused shall (subject to the Government cessation of movement regulations affecting Kilifi County) report to the local DCI office in their home county who shall in turn inform the DCI Garsen, and thereafter report once a month until the trial commences. Each accused is barred from visiting or dwelling in Tana Delta sub-county until the civilian witnesses have testified.
- iv. Each accused shall not in any way either by himself or through proxy contact, induce, threaten or intimidate any of the witnesses.
- v. Failure to observe any of the conditions shall lead to automatic cancellation of this bail/bond.
- vi. Orders accordingly.

Ruling delivered, dated and signed at Malindi this 15th Day of May, 2020.

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R. LAGAT KORIR

JUDGE

This Ruling has been delivered to the Accused via video link to Malindi GK prison (due to COVID – 19 regulations), in the presence of Mr. Juma (Court Assistant), Mr. Mouko Counsel for the Accused, Ms. Sombo (holding brief for Mr. Mwangi for the Respondent) and the Accused (virtually present).