



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 29 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

AUGUSTINE NGOLUA.....ACCUSED

RULING

1. **Augustine Ngolua (“the applicant”)** has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on 16/5/2020 at Kirindara village, Ntunene location, Igembe North Sub County within Meru County murdered Monicah Katunge.
2. After taking plea, Mr Muriithi, advocate for the accused applied for the applicant to be released on bond.
3. The prosecution opposed his release on bail. They filed replying affidavit of PC Douglas Kahiu. The deponent stated that the applicant has been accused of killing his mother and the main witnesses are his sister and two of his brothers. The other witnesses also reside in the same locality with the applicant. Hence, there is a high possibility that if released he is likely to intimidate or threaten the witnesses. It was his argument that the manner in which the deceased was killed was cruel as she was viciously attacked by a panga. The murder happened recently and contact with the applicant would ignite vengeful feelings which may lead to commission of other offences. He alluded to the severity of the offence of murder as it carries a maximum sentence of death.

**ANALYSIS AND DETERMINATION**

4. The general considerations in determining whether or not to grant bail are now contained in Bail and Bond Policy Guidelines and section 123A of the Criminal Procedure Code. They include: the nature of the offence; strength of prosecution case; character of accused and antecedents; failure by the accused to observe previous bail or bond; witness interference; protection of the victim; relationship between the accused and the potential witness(es); whether the accused is a child offender; whether the accused is a flight risk; if the accused is gainfully employed; public order; peace security; and whether there is need for the protection of accused person. These elements are important in determining whether there are compelling reasons to deny bail.
5. PC Douglas Kahiu in his affidavit indicated that the victim herein is the mother of the applicant and his siblings are key witnesses in this case. This claim throws me to what Sitati J stated in the case of **Republic v David Ochieng Ajwang Alias Daudi & 11 others (2013) eKLR** that:

**“...It is not in dispute that all the accused persons hail from the same locality as the potential witnesses, and this being the case, the danger of such witnesses being driven into a corner by the presence of the accused persons so soon after the ghastly death of the deceased persons is a real possibility. In addition, the fact that the accused persons are so many is likely to send a cold shiver down the spines of such witnesses and corner them into resigning not to appear in court during the hearing of the case even if the accused persons turn up. In a nutshell there will be no witnesses to testify. As Makhandia J (as he then was) said in the Kiteme Maangi case (above), Murder is a serious offence and attracts the death penalty. Self-preservation is a natural reaction or response of any human being. That self-preservation may take the form of ensuring critical evidence is suppressed forever or the applicant himself takes flight. Finally, such potential witnesses may not be comfortable seeing the accused walk around knowing that their evidence is critical to the success of the prosecution case. That is reason enough to cause such witnesses to have genuine fear, misapprehension and anxiety. It may even lead to such witnesses refusing to testify due to genuine misapprehension of their safety.”**

6. I cannot agree more. The killing took place not long ago. The deceased is the mother of the accused. His siblings are witnesses in this case. In such scenario, I tend to agree with the I.O that interference with witnesses is likely. Interference with witnesses need not be actual. It may be passive or stealth or arise out of his mere presence within the family precincts. On the basis of the above reasons, I deny him bail for

now. In light thereof, fast-tracking of this case is necessary. Accordingly, I order the vulnerable witnesses herein especially the family members of the victims to testify before the court without delay. It is so ordered.

**Dated, signed and delivered at Meru this 13<sup>th</sup> day of October 2020**

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**F. GIKONYO**

**JUDGE**

**Representation**

Accused – present

Muriithi for accused – absent

Maina for state

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**F. GIKONYO**

**JUDGE**