

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 33 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

MICHAEL THIONG'O KINYANJUI.....ACCUSED

RULING

Michael Thiong'o Kinyanjui is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of this offence are that on the 13th day of May 2018 at about 5.30pm in Umoja Zone 9 within Nairobi County, jointly with others not in this court murdered James Irungu Waithaka. The accused was brought before this court yesterday 17th June 2019. He did not take the plea because this court was informed that he has not been assessed mentally and certified fit to plead to the charge. He is represented by Mr. Midenga.

Prosecution counsel applied to have the accused remanded at Industrial Area Remand Prison and from there to be escorted to Mathare Hospital for mental assessment. The prosecution counsel further applied to have this matter mentioned on 4th July 2019 to have the accused take the plea and to have this matter consolidated with another matter already in court. The particulars of the other case to be consolidated with this one were not given.

Mr. Midenga opposed the application to have the accused remanded arguing that the accused is out on anticipatory bail granted by this court (Ngenye J) on 29th May 2019. Counsel asked this court to extend the terms of the anticipatory bail to the accused in this case pending the taking of the plea.

The prosecution counsel opposed the application to extend anticipatory bond terms to cover this case. She argued that the accused is now arrested and arraigned in court to answer to a charge of murder and should therefore be placed in custody. I reserved the ruling to today 18th June 2019 and remanded the accused in custody pending the ruling.

I have seen the orders of my sister Justice Ngenye dated 29th May 2019 in respect of HC Misc. Application No. 209 of 2019. The proceedings of that case in that court were not attached. This court is therefore not able to know what was canvassed before my sister judge to inform her orders. What is attached to an application dated and filed on 17th June 2019 is the application seeking anticipatory bail. That application has not been canvassed before me and there was no mention of the said application at the time this matter came up for the plea before me.

I have considered the matter. The application that was determined by my sister Justice Ngenye did not relate to this case. The matter related to some property involving the accused and the apprehension by the accused that he was being harassed because of some proprietary interest in that matter. As I have stated, this court is not fully aware of what was canvassed before the orders now being relied on were granted. What is clear to me is that the accused is now in court in respect to a murder where it was alleged that with others not before the court, the accused killed James Irungu Waithaka. This court has not been able to take the plea because the accused has not been certified fit to plead as procedure requires. To avoid prejudicing the application filed on 17th June 2019 I will not go into the details in my reasons behind my decision in this matter. Suffice it to state that I decline to grant the application sought at this stage. I order that the accused, Michael Thiong'o Kinyanjui, shall be remanded at Industrial Area Remand Prison to await mental assessment. Any others directions and orders in respect of bail can be handled in the normal manner in a case of this nature but after the plea has been taken.

By an order of this court, the Officer in Charge of Industrial Area Remand Prison is directed to ensure that the accused is escorted to Mathare Hospital for mental assessment. A report on from that assessment shall be filed in this court on or before 4th July 2019 when this matter shall be mentioned for plea and any other directions this court may give.

Orders shall issue accordingly.

Dated, signed and delivered this 18th June 2019.

S. N. Mutuku

Judge