



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**(CORAM: CHERERE-J)**  
**CRIMINAL CASE NO. 27 OF 2018**

**BETWEEN**

**REPUBLIC..... PROSECUTOR**

**AND**

**ISAAC KIPTOO RONO *Alias* MALAKWEN .....1<sup>ST</sup> ACCUSED**

**PIUS KIPKORIR MOSONIK .....2<sup>ND</sup> ACCUSED**

**JULIUS KIPYEGON MENGICH .....3<sup>RD</sup> ACCUSED**

**RULING**

1. On the 19.12.18, I directed the Probation Office to prepare a pre-bail report in respect of the 1<sup>st</sup> accused.

2. By a report filed on 06. 02.19, Wiilliam Otieno a probation officer (*the probation officer*) recommended that the 1<sup>st</sup> accused was suitable for release on bond.

3. When the matter came up for mention on 07.02.19, the *probation officer* stated that he wished to withdraw the report recommending bond and filed another report also dated 06.02.19 indicating that the 1<sup>st</sup> accused was not suitable to be released on bond. The report was based on the grounds that:

**1) The offence had brought a lot of animosity between two communities in the area where it was committed**

**2) There is a likelihood of backlashes if accused 1 is released on bond**

**3) The 1<sup>st</sup> accused is likely to be harmed**

**4) The wife of the deceased had expressed fears that the 1<sup>st</sup> accused might trace her with malicious intentions**

3. **CPL Vincent Langat**, one of the investigating officers by his affidavit sworn on 06.02.19 similarly opposed accused 1's release on bond on the grounds that:

- 1) **He was a flight risk and had tried to flee to Tanzania**
- 2) **He is likely to interfere with witnesses most of whom are his neighbours**
- 3) **A witness who was seriously injured on the date of murder is still admitted in hospital**
- 4) **1<sup>st</sup> accused had threatened some witnesses**
- 5) **The community is hostile and not ready to receive the 1<sup>st</sup> accused**
- 6) **1<sup>st</sup> accused is a squatter**
- 7) **1<sup>st</sup> accused is likely to abscond since he's charged with a serious offence that attracts a death sentence**

4. **CPL Fredrick Odemba**, another investigating officers by his affidavit sworn on 12.11.19 similarly opposed accused 1's release on bond on the grounds that:

**1<sup>st</sup> accused was arrested enroute to Tanzania and attempted to bribe area chief at Kapsisiywa to release him so that he could escape**

5. By his replying affidavit sworn on 14.02.19, the 1<sup>st</sup> accused opposed the application to deny him bond on the grounds that:

- 1) **He is married with 5 children and stays on 2 acres of land given to him as a gift**
- 2) **He is a sugarcane farmer and cattle trader**
- 3) **He does not know the witnesses and has not made any contact with them**
- 4) **The witness who was allegedly admitted in hospital was in court on 07.02.19**
- 5) **The probation officer has made two contradicting reports**

6. I have considered the application seeking to have the 1<sup>st</sup> accused denied bond in the light of the affidavits on record, the two probation reports and Article 49(1) (h) of the Constitution provides that:

**An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.**

7. The Probation reports confirm that 1<sup>st</sup> accused who is a sugarcane farmer and cattle trader is married with 5 children and stays on 2 acres of land given to him as a gift. There is no evidence that to date, the prosecution has revealed to the accused 1 the identities of the witnesses and the allegation that he has threatened witnesses is therefore unfounded.

8. The chief that 1<sup>st</sup> accused allegedly attempted to bribe at Kapsisiywa to release him so that he could escape to Tanzania has not sworn an affidavit and the averment on that issue by the 2 investigating officers is hearsay which is inadmissible.

9. The Probation officer has filed two conflicting reports of the same date one recommending that the 1<sup>st</sup> accused be release on bond and the second stating that he is not suitable for release on bond. The Probation Officer does not explain when he interviewed the witnesses who gave the negative reports yet the reports were made and filed on the same day. These two conflicting reports leave no doubt in the mind of the court that they are questionable and need to be treated with caution.

10. If the investigative arm of the state has obtained reliable information that there is likely to be a backlash between two communities if accused 1 is released, it is expected that those responsible should face the full impact of the law.

11. The 2<sup>nd</sup> accused who is jointly charged with accused 1 was released on bond on 28.03.19. There is no evidence that his release has caused any animosity between two communities in the area where it was committed nor has any witness expressed fear for his life as a result of 2<sup>nd</sup> accused's release on bond.

12. Whereas the prosecution may be placing reliance upon intelligence reports which suggest probable danger to the accused 1, and possibility of clashes, the police are by law required to protect life and property and Accused 1 is entitled to that protection notwithstanding that he is facing a murder charge.

13. Capital offences such as the one that accused 1 is facing are bailable. The fact that it is a serious crime is not a good ground for the prosecution to oppose his release on bail.

14. From the foregoing, I find that the prosecution has not provided the court with any tangible material to show that accused 1 has either interfered or attempted to interfere with witnesses or threatened any one of them, that he is likely to abscond or that his life is in danger.

15. It is therefore hereby ordered that the 1<sup>st</sup> accused be released on the same bond terms as his co-accused persons which is a bond of Kshs. 500,000/- with one surety of like sum. It is so ordered.

**DELIVERED AND SIGNED IN KISUMU THIS 21<sup>st</sup> DAY OF November 2019**

**T. W. CHERERE**

**JUDGE**

In the presence of-

**Court Assistants - Amondi/Okodoi**

**Accused 1 - Present**

**For Accused 1 & 3 - Mr. Maua**

**For Accused 2 - Mr. Onsongo**

**For the State - Ms. Gathu**