



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO 12 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

1. LEREIYO LEKIALE

2. NANGOYE LENAWASO

3. LEPUNYAKI LEKAASO

4. MUNYERIS LEKUPANAE

5. NKAACA LEPETA

6. TUBULA LELMOJOK.....ACCUSED PERSONS

RULING ON BAIL

1. The six (6) Accused persons herein -

Lereiyo Lekiale

Nangoye Lenawaso

Lepunyaki Lekaaso

Munyeris Lekupanae

Nkaaka Lepeta

Tubula Lelmojok

are charged with **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the information dated 13/11/2017 that on 24/10/2017 in Kilimon Location, Laikipia North Sub-County within Laikipia County, jointly with others not before the court, they murdered one **Lmalewan Lesondoreka**.

2. On 07/12/2017 the 1st Accused (Lereiyo Lekiale), the 2nd Accused (Nangoye Lenawaso) and the 4th Accused (Munyeris Lekupanae) were all medically assessed to be about 17 years old. That means that they are now about 18 years old. The other 3 Accused were at the same time assessed to be adults.

3. Initially the three minors (1st, 2nd and 4th Accused) were remanded at the **Nyeri Children's Remand Home**, but due to their violent and unruly behaviour they had to be removed from there and remanded at **Nanyuki Police Station**.

4. On 13/12/2017 all the Accused persons pleaded not guilty to the charge. Their trial commenced before **Kasango, J** on 13/02/2018. It appears that at some point Kasango, J called for pre-bail reports on the Accused persons. The reports were unfavourable although the record does not show that the court denied in terms the Accused persons bail.

5. On 26/09/2018 the Accused persons, through their counsel, renewed their applications for bail. On 18/10/2018 the prosecution filed an

affidavit sworn by **PC Evans Kibet**, the investigating officer, opposing bail for all. The main reasons for opposing bail are -

- (i) That the Accused persons are a flight risk as they did not, at the time of their arrest and subsequently, provide any details of their residences or permanent places of abode.
- (ii) That the Deceased in the case was killed while the perpetrators were in the process of committing the offence of stock theft.
- (iii) That the Accused persons were arrested while in the process of committing a subsequent similar offence.
- (iv) That the Accused persons appeared to be members of an organised gang of stock thieves, and there was thus danger of them committing more similar crimes if admitted to bail.

7. None of the Accused persons filed any affidavits in response to the investigating officer's affidavit. I have considered the submissions of their learned counsel as well as those of the learned prosecution counsel.

8. Bail pending trial is now a constitutional right that will be denied only for compelling reason; and any condition for such bail, again by constitutional edict, must be reasonable. See **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

9. Compelling reason must necessarily be mainly a matter of evidence laid before the court by the prosecution. However, there is nothing to prevent the court from finding such compelling reason from any other material legitimately before it, for instance, the witness statements and other documents that may be provided to the accused and the court by the prosecution. In this regard I have perused the witness statements and other documents provided to the Accused persons herein and to the court by the prosecution.

10. The presumption of innocence of the Accused persons is of course uppermost in the court's mind pending conclusion of their trial. But I note from the circumstances of this case as disclosed by the witness statements and the testimonies of the two witnesses who have already testified, that some three firearms (2 rifles and a carbine) were involved when the Deceased was killed. There are still at large other persons who were said to have been with the Accused persons during commission of the alleged offence.

11. It is also to be noted that part of the prosecution case is that the Accused persons were arrested during commission of a subsequent offence similar to the one in which the Deceased was killed.

12. More importantly, none of the Accused persons has provided any address or details of their permanent places of abode; in the event of their not turning up for their trial should they be admitted to bail, it would be very difficult to trace them.

13. In every consideration for bail pending trial, notwithstanding that it is a constitutional right, the court must have the certainty that the accused will attend court for his trial, and that if he does not do so, it will be reasonably easy to apprehend him and present him to court for the trial. In the present case, and in respect to all the Accused persons, I am satisfied that it would be very difficult to trace them and bring them to court for their trial should they jump bail. This is a compelling reason to deny them all bail.

14. In the event all the Accused persons shall remain in custody for the duration of their trial. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 20TH DAY OF NOVEMBER 2018

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 22ND DAY OF NOVEMBER 2018