

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO E008 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

1. **WILSON MURAYA MWANIKI**)
2. **DOREEN GAICHUGI MUWIRI**)
3. **SAMUEL MUTHEE WANGUI alias SEXY**)
4. **VERONICA NJERI WANJUGU**).....**ACCUSED**

RULING ON BAIL

1. The Accused persons in this case, **WILSON MURAYA MWANIKI, DOREEN GAICHUGI MUWIRI, SAMUEL MUTHEE WANGUI** and **VERONICA NJERI WANJUGU** are charged with **murder** contrary to **sections 203** and **204** of the **Penal Code**. It is alleged in the information dated 24/07/2023 that on the night of 30th June and 1st July 2023 at Kalalu Trading Centre in Laikipia East Sub-County within Laikipia County jointly murdered **KEVIN GATHOGO WANGUI**.
2. On 27/07/2023, they pleaded not guilty to the charge. They were denied bail vide a ruling dated 19/12/2023. The accused counsels have made fresh applications for the accused persons

to be released on bail. They filed replying affidavits to the State's affidavit opposing bail dated 26/07/2023 sworn by one of the investigating officer **PC GITHINJI MWANGI**.

3. The 1st accused deposed that most of the witnesses whom the investigating officer had said were likely to be interfered with have already testified and the remaining witnesses do not mention his name in their witness statements. That there will be no form of coercion, influence or intimidation of any prosecution's witnesses once he is released. The averments in paragraph 8, 9 and 10 of the affidavit opposing bail are misleading as he was not the one who made those threats as the same were made by PW2's boyfriend. That the investigating officer said he was a violent repeat offender yet he has never been tried for any offence. That there is no evidence that has been availed to show that he is a flight risk hence, there are no compelling reasons that have been advanced for him to be denied bail.
4. The 2nd accused deposed that the prosecution failed to prove that she is a flight risk or had interfered or intended to interfere with any witness. That she lives and works for gain in

Kalalu and has no intention of moving out and has no passport to enable her travel anywhere. The prosecution has not provided any compelling reasons to warrant the denial of bail.

- 5.** The 3rd accused deposed that there is no evidence that he murdered the deceased since the witnesses who have testified so far have not mentioned that he murdered the deceased. The prosecution has also failed to prove his guilt beyond reasonable doubt. There is no evidence that he has threatened or is likely to threaten any witness and there is no evidence that the text messages originated from the him. Further, the witnesses who were allegedly threatened have already testified and that there is no evidence that he is likely to be convicted based on the evidence so far.
- 6.** The 4th accused filed grounds of opposition on account that there are no compelling reasons to deny her bail and no evidence has been tendered to prove that she committed the offence as the witnesses who have testified denied knowing the person who murdered the deceased. That she has no intention to interfere with the remaining witnesses since there

is no evidence suggesting that any threats or intimidation has been made by the her.

7. The DPP adopted the affidavit that was earlier filed by the State and made oral submissions made in court. The reasons advanced for opposing bail are-

- i. That there is a reasonable apprehension that there will be intimidation and interference of witnesses including the Accused persons' neighbours who were present and on account that the deceased was murdered within their neighbourhood. The Accused persons also hail from the same neighbourhood as the deceased.
- ii. That during investigation, one of the crucial witness has been threatened by way of a text message and is currently living in fear of being harmed. That she received a message from her friend who heard this case being discussed at Kalalu Trading Centre with plans to harm any person who would be willing to testify in this case. That the message has caused fear even to other

prosecution witnesses who reside in the same neighbourhood.

iii. That the 1st Accused is a violent repeat offender having been reported previously for assault and there is reasonable fear that he might cause unrest within the neighbourhood if released on bail.

iv. That the prosecution has overwhelming and irrefutable evidence that points to the Accused persons guilt and there is high probability that the prosecution will secure a conviction. The prosecution is apprehensive that they may flee the jurisdiction of the court

8. In her oral submissions, Ms Kimani for the DPP stated that there is a likelihood of interference with witnesses since the witnesses are known by the Accused persons on account that they are neighbours. One of the witnesses has received threats and has stated that she will not testify. That the 1st Accused is a repeat offender and if released, he might commit another offence. Finally, the prosecution is likely to secure a conviction

due to the strength of the prosecution's case. That the strength of a prosecution case is a compelling reason to deny bail as provided under the Bail and Bond Policy.

- 9.** The 2nd accused counsel filed written submissions and argued that the 2nd accused was living with her mother who wholly depended on her and she has no previous criminal record and relates well with neighbours and members of the community. That the prosecution has not produced material evidence or specific instances of interference or intimidation of witnesses. Further, her family is willing to provide a surety. The prosecution has not provided evidence that she will abscond court if granted bail or engage in acts that will undermine the administration of justice. There is no evidence that she is a flight risk and the court is urged to grant her bail since PW2 has since testified.
- 10.** I have considered the arguments proffered by the parties. The accused persons were denied bail by this court since one of the witness had expressed fear of testifying after receiving warning against testifying in this case. This court also noted that the witnesses hailed from the same area and possibility of

fear or harm could not be overlooked. The court also found that the application for bail may be urged as the case progressed.

- 11.** Bail pending trial is now a constitutional entitlement in all criminal offences. It will be denied only for compelling reasons; and any conditions that the court might impose, again by constitutional edict, must be reasonable. See **Article 49(1) (h)** of the **Constitution of Kenya, 2010** which states that every accused person has a right-

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

- 12.** The reasons advanced by the prosecution for denial of bail are;
- i. Interference and intimidation of witnesses.
 - ii. The 1st Accused is a violent repeat offender
 - iii. That the prosecution has overwhelming evidence that points to the Accused persons guilt.
- 13.** The third reason was found to have no merit in the previous ruling.

- 14.** The second reason advanced is that the 1st Accused is a violent repeat offender and the court found that this reason alone was not a compelling reason to deny the 1st accused bail.
- 15.** Likelihood of interference and intimidation of witnesses if proved on balance, is a compelling reason to deny an accused person bail because interference with witnesses will be subversion of justice. It is trite that the specific instances of or likelihood of interference with witnesses must be laid before the court with such succinct detail or evidence in support thereof as to persuade the court to deny the accused bond on this ground.
- 16.** In the affidavit opposing bail, it was stated that a witness had received threatening messages warning her against testifying. That a friend had sent her a message that stated as follows;
- ‘Mwiki pls usiwe shahidi wa huyo kijana ariuwawa hapo maili nane pls pls if uwa unasikia na juu uwa nakuambia kitu usikii hii kitu itakuweka kwa shida pls nakuomba tu hizo story wachana nazo kambisaa lala poa’.*
- 17.** It is now apparent that it was PW2 who received threatening messages. She testified that she received text messages warning her against testifying in this matter and the message was by Daniel Theuri Kimotho who is not an accused person in

this matter. She further testified on cross examination that Daniel was her boyfriend.

- 18.** It is therefore apparent that the message was not sent by any of the accused persons. It is also noteworthy that 5 civilian witnesses have already testified. This court is however not aware how many civilian witnesses are remaining but, whichever the case, the prosecution has not raised any other/new specific case of a witness who would be facing threats, intimidation or interference from any of the Accused persons.
- 19.** A review of the matter shows that the circumstances that initially stood in the way of grant of bail to the Accused persons have since dissipated as the witness who could have been the target of interference has since testified.
- 20.** The constitutional guarantee for bail thus comes into play and the accused ought to enjoy that fundamental right as per the constitution.
- 21.** It cannot be gainsaid that the progress of the case so far is a relevant factor in considering the grant of bail and the terms thereto. Unlike when the case started, evidence has been laid

before the court and the accused persons individually now know the weight of the case against each of them. The cardinal consideration in grant of bail is that an accused attends court for trial.

- 22.** To ensure such attendance, am satisfied that bail if granted at this stage, the same should be on stringent terms noting that the weight of the case may be a catalyst for absconding.
- 23.** In the premises, I admit all the Accused persons to bail in terms that each is to sign a Personal bond of Kshs. 500,000 with 2 sureties of like sum.

Dated signed and delivered this 17th day of December 2025.



A.K. NDUNG'U

JUDGE