

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. E034 OF 2024

PETER

THUO

KAMANDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDEN

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RULING

- 1.** The accused, *Peter Thuo Kamande*, faces a charge of murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. The particulars allege that on the night of 28th October 2024 at *Gitura* village, in *Kandara* sub-county, *Murang'a* county, he murdered *Wilfred Ndung'u Kamande*.
- 2.** On 19th November 2024, the accused was arraigned before this court for plea taking and he denied the charges. On the same date, *Ms. Kerubo*, his learned counsel, made an oral application

seeking that the accused be admitted to bail or bond on reasonable terms pending his trial.

- 3.** The application was opposed by the prosecution through an affidavit sworn on 19th November 2024 by the investigating officer, *PC Collins Okeyo*.

PC Collins deposed that as the deceased was the accused's elder brother, his family members and members of his community were prospective prosecution witnesses and his release would inflict genuine fear and anxiety among them; that members of his family and the community at large were still bitter and hostile towards the accused and if released, his security and safety would be at risk. In addition, *P.C Collins* deposed that the accused was aware of the severe punishment the charge of murder attracted and if released, he was likely to abscond.

- 4.** On behalf of the respondent, learned prosecution counsel *Ms. Manyal* opposed the application. In her submissions, she relied heavily on the replying affidavit sworn by the investigating Officer and emphasised that the accused and key prosecution

witnesses were members of the same family and resided in the same village, as such, there was a strong likelihood that the accused if admitted to bond would interfere with the prosecution witnesses.

- 5.** Further, Counsel submitted that the security of the accused may not be guaranteed if released since his presence in the community may provoke retaliation and unrest.
- 6.** In response, *Ms. Kerubo* submitted that the accused is entitled to bail or bond under *Article 49(1)* of the Constitution, unless compelling reasons were shown to exist; that the reasons advanced by the prosecution in opposition to bond have not been backed by any evidence and that in any case, the accused was presumed innocent until proved guilty. She urged the court to allow the application.
- 7.** It is trite that under *Article 49 (1) (h)* of the Constitution of Kenya, an arrested or accused person has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there were compelling reasons not to be released.

8. The Court of Appeal in **Michael Juma Oyamo & another V Republic (2019) eKLR** cited with approval the High Court decision in **Republic V Joktan Mayende and 3 Others Criminal Case No. 55 of 2009**; and defined the phrase “compelling reasons” as follows:

“The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the Constitution.”

9. Section 123A (2) of the *Criminal Procedure Code* (CPC) as read with *The Judiciary Bail and Bond Policy Guidelines 2015 paragraph 4.26* provides guidance on the factors courts should consider when exercising their discretion in deciding whether or not compelling reasons have been advanced to justify denial of bail or bond pending trial. These factors include the following;

- i) Whether the accused was likely to abscond;
- ii) Whether he was likely to commit or abet commission of a serious offence;

- iii) Whether he was likely to endanger the safety of victims, individuals and the public;
- iv) Whether he was likely to interfere with witnesses or evidence;
- v) Whether he was likely to endanger national security or whether it was in the public interest or the accused's own safety to detain him in custody.

10. It is a well settled legal principle that where an application for bond pending trial was opposed, the prosecution had the burden of demonstrating to the satisfaction of the court existence of compelling reasons which could justify denial of bail or bond as prayed- See: **R. Vs Danson Mgunya and Kassim Sheebwana Mohamed, Mombasa Criminal Case No. 26 of 2008; Patius Gichobi Njagi & 2 Others V Republic (2013) eKLR;**

11. In the present case, the main reason advanced by the prosecution in opposition to the application is that the accused is alleged to have murdered his elder brother and his immediate family and members of his community at

large were still bitter and angry over the loss of their loved one and they were still hostile towards the accused; that his release may trigger retaliation and unrest in their village and as such, his safety cannot be guaranteed.

- 12.** The position taken by the prosecution finds support in the pre-bail report filed on 29th October, 2025. A reading of the report clearly shows that the parents and siblings of the accused were still mourning the deceased and they were vehemently opposed to accused's release on bail since they considered him a threat to their physical and psychological wellbeing. The local administrator confirmed that the memory of the manner in which the offence was committed was still fresh in the memory of members of his community and they were not ready to receive the accused back into their community.
- 13.** The pre-bail report is the product of a social inquiry independently conducted by a Probation Officer and the findings therein, though not binding on the court, offers very useful information regarding an accused person's suitability

to admission to bond pending trial taking into account the situation on the ground and also documents views of the victims which this court is enjoined to consider under the *Victim's Protection Act of 2014*.

- 14.** From the depositions in the replying affidavit which have not been disputed by the accused and the findings in the pre-bail report, it is evident that the accused's nuclear family and his neighbours are yet to come to terms with the death of the deceased which they blame on the accused. Their pain and grief is still raw which is understandable considering that it's only slightly over an year since the offence was allegedly committed.
- 15.** Given the strong hostility towards the accused both at the family and community level, it is my finding that releasing him on bond at this point in time may compromise his safety. Although I totally agree with *Ms. Kerubo's* submissions that the accused had a right to be presumed innocent until proved guilty, I think this is one of the cases which require that the accused be detained in custody for his own

protection and safety. It would be remiss of this court to allow the application when there was evidence that if released, the accused person's life or safety may be in jeopardy.

- 16.** It also important to note that it is not disputed that some of the prosecution key witnesses are members of the accused's nuclear family and if released, the accused would in all probability go back to the same home in which the witnesses reside and given these circumstances, claims of possible witness interference cannot be said to be farfetched.
- 17.** In view of the foregoing, I am satisfied that the prosecution has demonstrated compelling reasons to justify denial of bond to the accused person in this case. I therefore decline to admit the accused on bond at this stage. The accused may renew his bond application after his family members testify and after the situation on the ground has improved.

It is so ordered.

DATED, SIGNED and DELIVERED at **MURANGA** this 11th day of February 2026.

HON. C.W. GITHUA

JUDGE

In the Presence of :

The Accused

Ms Kerubo for the Accused

Mr. Mwakio for the State

Ms. Doreen, Court Assistant