

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ITEN
CRIMINAL CASE NUMBER E014 OF 2024

REPUBLIC.....COMPLAINANT

VERSUS

THOMAS KANDA YANO.....1ST ACCUSED

PAUL YANO YEGO.....2ND ACCUSED

RULING

1. This Ruling is with respect to whether the court should release the accused persons on the bond terms that it already set at a Personal Bond of Ks. 100, 000/- plus one Surety of like amount on 8th May 2025. This is by dint of the fact that upon the delivery of the said Ruling and before the bond terms could be effected, one Regina Cheserem who was present in court asked to be allowed to address the court and the court acceded to her request.

2. In her communication to court, she protested to the release of the accused persons on bond. She stated that she is the daughter of the deceased and works in Bungoma as a Police Officer. That she was in court with her brother to tell the court that they were dissatisfied with the manner in which the matter was being handled for reasons that the Investigating Officer is not communicating with them at all and that even on the date of plea taking they were not informed. That further, the witnesses for the prosecution were being threatened on the ground and are refusing to come to court.

3. The court referred them to the Prosecutor to air whatever grievances they may have with the manner in which the investigation of the case is being handled to

enable the prosecutor raise their concerns with the investigating Officer and decide on the way forward. In the meantime, the court held the bond terms as set in abeyance and called for another Pre-Bail Report based to satisfy itself on truthfulness or otherwise of the assertions made by the deceased daughter before making its final determination on bond.

4. Pre-Bail Reports with respect to both accused persons dated 5th June 2025 prepared by one Josephine Shemi were filed. In a nutshell, in both reports, animosity and hostility between the families of the accused persons and the deceased have been reported. In fact, with regard to the 1st accused, the threats are from the two divides. It is alleged that the deceased daughter has threatened to kill one of the accused family members and the matter has been reported to Mogil Police Station and on the other hand, the deceased brother has also been threatened by the accused family.
5. In both reports, it is stated that witnesses are being threatened in an effort to deny the family of the victim justice and that the release of the accused persons will only lead to further interference. The reports state that it was noted that family of the accused persons are arrogant and contemptuous and have been using demeaning and provocative utterances to the family of the deceased to the effect that the deceased died of hunger and that the deceased's family do not have money to continue with the case. Further that they also show no remorse. For these reasons, the deceased family states that they are ready to revenge if the accused persons are released on bond.
6. The court notes from the Report that these assertions made by the family of the deceased have not been denied by the family of the accused persons save that the accused family urges that they be granted bond and state that they are ready

to stand surety for them and are also ready to relocate them out of the locus in quo to a jurisdiction further away for their own safety. The court notes further from the Report that the local administration too is of the view that the ground is still hostile for the release of the accused persons on bond since cultural rites for reconciliation have not been performed for reasons that the accused' families are uncooperative.

7. All the above issues raised in the Report notwithstanding, the recommendation of the Probation Officer is for the release of the accused persons on bond for reasons that they are elderly and their families are ready to relocate them.

Determination

8. The court notes that the plea in this case was taken on 8th October 2024. The 1st Pre-Bail Report was filed. The same was dated 16th October 2024 prepared by one Anne Liaulo was negative and did not recommend for the release of the accused persons on bond for more or less similar reasons though in this first report, remorse was expressed by the family of the deceased and they were willing to engage in reconciliation talks. The court upheld the Probation Officer's recommendation and denied the accused persons bond in its Ruling dated 21st November 2024.
9. A second application seeking that the court reviews its order denying the accused persons bond was made subsequent to which the 2nd Pre-Bail Reports dated 5th March 2025 for the 1st accused prepared by one Josephine Shemi and the other dated 6th March 2025 for the 2nd Accused prepared by one Mercy Nachuch were filed. Both Reports were negative and recommended that the

accused persons be denied bond again for similar reasons and urged that the bond applications be considered once the animosity had lessened.

10.The Prosecutor on the other hand in her address to court stated that that she had consulted with the Investigating Officer who was present in court and who stated that there were no compelling reasons to warrant the denial of bond to the accused persons. On the strength of this position taken by the Prosecutor, the court granted the accused persons bond in the terms herein stated which it subsequently held in abeyance for the reasons herein stated.

11.Having addressed my mind afresh to the issues raised in the 3rd Pre-Bail Report, which issues are the same that have been recurring in the other two Reports, it is clear that the hostility and animosity on the ground between the two families has not gotten any better. If anything, it has gotten worse. For the family of the accused persons to state that they are willing to relocate their kin elsewhere is in actual fact and admission and a reinforcement of this fact.

12.Much as the Report now recommends the release of the accused persons on bond for the reasons given, it is my very well considered opinion that given that the situation on the ground has not changed since October 2024 when the plea was taken and that the animosity and hostility between the families which the court then found was sufficiently compelling to warrant the denial of bond to the accused persons has now escalated to the level of threats being issued to witnesses who in turn are now afraid and/or reluctant to come to court, the issue is no longer about the safety or otherwise of the two combating families, it is now about an attempt and/or intent to interfere with and justice of the case a matter which the court takes very seriously for reasons that it is indeed another of the compelling reasons for which an accused person can be denied bond.

13.For the above reasons, the earlier orders issued granting the accused persons bond in the terms herein stated are now hereby reviewed, set aside and vacated. The application by the accused persons for their release on bond is accordingly denied and the accused persons shall remain in custody throughout the pendency of the trial. It is so ordered.

Read Dated and Signed at ELDORET on 20th February 2026

**E. OMINDE
JUDGE**