



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE NO. E036 OF 2021

REPUBLIC.....PROSECUTOR

-V/S-

KELVIN NAFTALI OGANGA alias

JOHNSTONE KILONZO alias

MORGAN (DOG MASTER).....1ST ACCUSED

MERCY MWIKALI.....2ND ACCUSED

RULING

1. The accused persons herein Kelvin Naftali Oganga alias Johnstone Kilonzo alias Morgan (Dog Master and Mercy Mwikali are jointly charged with offence of murder contrary to Section 203 as read with Section 204 of the penal code.
2. The particulars are that on the 19th day of September 2021 at Kigombero area Kikoneni Location in Lungalunga Sub-county, within Kilifi County jointly murdered Himid Said Saleh.
3. The prosecution objected to release of Accused 1 on bond pending trial and P.C. Allan Murithi filed an affidavit sworn on 15th February 2022 in support of the objection saying that release of Accused 1 could pre-judice prosecution case as his fixed abode & social or community ties are yet to be established and he is likely to abscond as he is facing a serious offence.
4. P.C. Murithi averred further that A1 was arrested in a hideout in Karen in Nairobi and it has not been established if he is registered as he didn't have any identification documents at the time of his arrest. He also claimed that the accused has no known source of income to support his lifestyle and that he was also found in possession of deceased person's phone which he was using to threaten and demand money from family of deceased. He alleged that if released the accused will be a threat to lives of deceased family members.
5. Ms. Kuria's Advocate opposed the objection vide Reply of affidavit sworn on 14th March 2022 and said the objection was an afterthought and the prosecution had not provided evidence that 1st accused is likely to abscond if released on bond.
6. She averred that the 1st accused person's mother and siblings reside in Likoni and that his father is deceased. That accused is married and has a 2 years old child. She said that A1 was arrested in his home in Ngong after A2 led them there.

7. On issue of identification documents, it was averred that A1 lost his ID Card and has a waiting card which was left on the house at the time of his arrest as he was not accorded time to trace it or even wear descent clothes.

8. The 1st accused persons advocate annexed evidence in the affidavit that accused is a dog trainer and is known as such even on his social media platform.

9. Ms. Kiria further contends that there was no evidence to show accused had threatened the deceased person's family members and that allegations by prosecution was based on speculation.

10. This court called for social inquiry report in respect of A1 before a ruling on application's for bond could be rendered. Prebail Report was filed on 16th March 2022 and what is concern to this court is that the offence herein was committed on 19th September 2021 and the 1st accused while in court admitted having witnessed the murder which offence took place in Kigombera area in Kikoneni Location in Kwale County and A1 was traced in Karen in Nairobi long after the offence was committed. It is not explained in the Replying Affidavit when he relocated to Nairobi when his mother and siblings are said to be in Likoni where he went to school.

11. That gap and lack of explanations raises suspicion as to whether A1 will be able to attend court upon being released on bond. Coupled with the fear of absconding is the fact that his real identity has not been established and the prosecution have to await Report from National Registration Bureau to know exactly who A1 is.

12. In the circumstances this court finds that there is compelling reason why A1 should not be released on bond, A1 will remain in custody pending hearing and determination of trial herein unless there is change of circumstances in which case an application for review may be made for this courts consideration.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 01ST DAY OF APRIL 2022

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Accused 1 – Present in person

Accused 2 – Present in person

Ms. Kuria Advocate for A1

Ms. Munyari Advocate for A2

Mr. Ngiri for State

Hon. Lady Justice A. Ong'injo

Judge

Ms. Kuria

We have already been supplied with all documents.

Order

Hearing – 11/10/2022 and 12/10/22.

Summons requiring attendance to P.C. Allan Murithi c/o

DCI Kwale to avail witnesses.

Hon. Lady Justice A. Ong’ingo J

1/4/2022



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