



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 9 OF 2020

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

VERSUS

WASHINGTON OCHIENG ONYANGO.....ACCUSED

RULING

By way of a Notice of Motion application dated 5.11.2020, the applicant, **WASHINGTON OCHIENG ONYANGO**, has applied for revision of the orders of this court of 1.10.2020. It is pleaded that this court be pleased to place the applicant on bail. In the short submissions made in court, counsel for the applicant relied on an affidavit. She had sworn in support of the application and submitted that the applicant had been denied bail on grounds that the children of the couple would be called as witnesses, but that the statements supplied by the prosecution did not have any by the children to be called as prosecution witnesses. And that not even the brother of the applicant is a witness. Counsel relied on the case of *Republic Versus Benson Mutua Mwanzia (2018)eKLR*. (Copy not attached) in which the court had held that claim of interference with witnesses must be shown and that sibling relationship on its own cannot be a ground for denial of bail.

The prosecution opposed this application on the grounds that no circumstances have changed since the time the ruling of the court was made. That in making the orders, the court had considered threats, fear and intimidation of witnesses. That the court had ruled that it could review the decision only after the family members have testified.

I have considered the submissions of both the defence and prosecution counsel. This matter of bail of the applicant had been ruled on by the Hon. Justice J. Wakiaga in the ruling of 1.10.2020. It is therefore on the applicant to prove to this court that circumstances herein have since changed to the extent as to justify the revision of the orders of the court. The circumstances that formed the mind of the Honorable Judge in making the said orders are clearly contained in the ruling of the court.

At paragraph 10 of the said ruling, the Honourable Judge held;

“In this matter, I have taken into account the unchallenged facts that the accused and the deceased were husband and wife and that the incident occurred in the confines of their home, in the presence of their children and the accused’s younger brother, given in the close relationship between the accused and the intended witnesses the possibility of his presence at the home or with them interfering with their evidence cannot be ruled out. I have further taken note of the affidavit of the investigating officer and the submissions by Ms. Gikonyo giving the names of intended prosecution witnesses who have either received threats or intimidation and is satisfied that the prosecution has met the test set out by R. Korir, J. in Republic Versus Dwight Sagaray.”

The court went on to order that the accused shall remain in custody until those witnesses who are either related to him, his neighbours and the workmates of the deceased have testified and their evidence secured. That was the condition that the court placed before the applicant could make a further application for bond.

As it were, this case still remains unheard. The witnesses related to the applicant are yet to give their evidence. Yes, the defence submissions are that the children and brother of the accused may not be witnesses since their statements have been supplied. The prosecution has otherwise maintained that these are prosecution witnesses. This court is not able to determine the actual position herein since the court has not been shown the full list of witnesses herein. If they turn out to be, then the finding of the Honourable Justice Wakiaga would still hold.

The 2nd reason for denial of bail was on the threats to witnesses. The prosecution had submitted on the specific threats to the named witnesses including the accused’s neighbours and workmates of the deceased. Again, none of these witnesses have testified in court.

The sum total of all these is that there have been no change in the circumstances of this case as would warrant any revision of the orders of the court of 1.10.2020. This application dated 5.11.2020, being clearly made prematurely must fail. I find no merit in the same and dismiss it accordingly.

D. O. OGEMBO

JUDGE

23.2.2021

Court:

Ruling read out in open court in presence of Ms. Murito for the accused and Ms. Kimani for the state and also the accused.

D. O. OGEMBO

JUDGE

23.2.2021