



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 82 OF 2016

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

EZEKIEL KIVATI THOMAS.....RESPONDENT

RULING

1. **EZEKIEL KIVATI THOMAS, (Ezekiel)** was charged in this case with the offence of murder of **BENSON GACHIRA KAMAU**.

2. On 8th December, 2016 the court granted Ezekiel bail pending trial as follows:-

“(i) He shall be released on his own cognizance in the sum of Kshs.500,000/= and one surety of like sum.

(ii) accused shall not contact the deceased family whether directly or indirectly.

(iii) the accused shall not visit Thogoto area or its environs without prior authorization from the court.

(iv) Accused shall report to the D.R. every last Thursday of the month.”

3. On 16th July, 2018 the court made an order to the effect:-

“Bail terms are reasonable”.

4. The proceedings of that day do not indicate if the court order, that the bail terms were reasonable, was in response to an application by Ezekiel for review of the bail terms: but it is more probable that Ezekiel did request for review of his bail terms.

5. On 8th June, 2021 the learned counsel for Ezekiel, *Mr. Gachau* once again requested this Court to review the bail terms.

6. The offence Ezekiel faces is serious and if he is convicted it would attract heavy punishment. This is one of the considerations to be borne in mind in an application for bail. This is what was stated in the case **REPUBLIC VS. ROBERT ZIPPOR NZILU (2018) eKLR** thus:-

“Gravity of the offence as a consideration was appreciated by Mboghli Msagha, J in Criminal Application No. 319 of 2002 PRISCILLA JEMUTAI KOLONGE VS. REPUBLIC (unreported) at page 3, wherein he held as follows:-

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.’”

7. Ezekiel in seeking review of his bail terms failed to state what circumstances had changed to warrant a review. This was necessary particularly because this Court on 16th July, 2018 held that the bail terms initially ordered were reasonable. This is what was held in the case **REPUBLIC VS. NAOMI NECHESA SANYA & ANOTHER (2020) eKLR** as follows:-

“6. In application for review of bail terms, the court has to take into account the following factors; that there had been a change in circumstances since the order sought to be reviewed was made. This court has had to pronounce itself on the said issue as follows:-

*‘14. This Court faced with a similar application in **REPUBLIC v JOSEPH KURIA IRUNGU alias JOWIE & ANOTHER [2019] eKLR** has this to say:-*

*“The Applicant bears the burden on review to show on a balance of probability why the earlier order should be vacated and why it should be unjust not to vacate the order. He must show that the circumstances of the case are so altered that compelling reasons are disclosed for review of the earlier order. This position was clearly stated by Justice Muriithi in his well argued decision in **REPUBLIC v DIANA SULEIMAN SAID & ANOTHER [2014] eKLR**:-*

‘11. The changed circumstances test is one of common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful Applicant for bail may repeat his application if his circumstances changed in such a manner as to favor his release on bail...’”

8. There being no changed circumstances which favour the revision of the bail terms and because the bail terms of 8th December, 2016 are reasonable, the application for revision is disallowed.

RULING DATED and DELIVERED at KIAMBU this 29th day of JUNE 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Accused : Present

For Accused : Mr. Gachau

For DPP: Ms. Kathambi and Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE