



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO.29 OF 2019**

**REPUBLIC.....DPP/RESPONDENT**

**VERSUS**

**LTANINGOLI LENEMITA Alias WILLY SAMSON**

**LESINGIRAN Alias YUSUF KEROW.....1<sup>ST</sup> ACCUSED**

**SIKITAAT LEPARMORIJO Alias LENTOOK.....2<sup>ND</sup> ACCUSED/APPLICANT**

**PETER MITIRAN LEKOLUA.....3<sup>RD</sup> ACCUSED/APPLICANT**

**RAELI LENNGO Alias LEPHARIARI.....4<sup>TH</sup> ACCUSED**

**LOCHUKU LEKEPIE.....5<sup>TH</sup> ACCUSED**

**RULING**

1. The accused person's applications for bond were initially declined by Gikonyo J on 21/11/2019 on the main basis that the accused had no fixed abode and would be difficult to trace and additionally, that there were other persons connected with the offence who were yet to be arrested and there was fear that the accused persons would interfere with or just thwart the progress in such investigations. For those reasons the court found that the prosecution had established compelling reasons to justify denying the accused bond pending hearing and determination of the matter.

2. Undeterred, on 29/7/2020, a subsequent application for review of the orders denying them bail was put under consideration and once again dismissed on the grounds that nothing had been availed to assure the court that the accused would not abscond in addition to the fact that the case presented a peculiar scenario in which two witnesses went missing and the body of the deceased was yet to be recovered.

3. Now, the 3<sup>rd</sup> accused person has approached this court through an application for review of the orders denying him bail. When the matter came up for hearing of the two applications, on the date appointed, only counsel for the 3<sup>rd</sup> Accused and holding brief for counsel Lekona and Igweta for the 1<sup>st</sup> and 4<sup>th</sup> was ready with his application while Miss Nelima for the 2<sup>nd</sup> Accused was not. On that basis, only the application by the 3<sup>rd</sup> accused was heard as Ms Nelima did not attend at the appointed time. This determination therefore only concerns the application dated 25<sup>th</sup> Jan 2021.

4. In the application, the 3<sup>rd</sup> accused asserts that new developments have emerged prompting him to file his application. The new developments alluded to are his underlying medical condition and the willingness of his father to stand surety for him. He has also exhibited a letter from the chief of Oldonyiro location, to show that he has a fixed abode.

5. The application was strongly opposed by the prosecution/respondent through the replying affidavits sworn by CPL Joseph Owenga on 4/3/2021 where the deponents adopts the earlier affidavit sworn by CPL Mohammed Hassan on the 6/7/2020 and contends that the applicant remains a nomad with no fixed abode. The officer then adds that the letter from the area chief was lacking in credibility because chief who wrote the letter annexed to the 2<sup>nd</sup> accused's application is his relative, therefore there is conflict of interest. The authenticity of the medical report in respect to the 3<sup>rd</sup> accused is termed suspicious because, there is neither a referral letter from the prison nor treatment notes attached to it.

6. For the applicant to succeed in an application of this nature he must establish to the satisfaction of the court, that there has been a change in circumstances since the order sought to be reviewed was made. **In *R v Joseph Kuria Irungu Alias Jowie & Anor [2019] eKLR*, the court had 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.”**

7. The same position was similarly taken in *R v Diana Suleiman Said & Anor [2014] eKLR* where the court observed ‘that 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. I find nothing in the provisions of Article 49(1)(h) of the Constitution or Section 123 of the Criminal Procedure Code to suggest that the court once grant or refuse bail becomes *functus officio* or that the issue of bail becomes *res judicata* upon decision to grant or refuse bail. Article 49(h) entrenches the right of the arrested person to be released on bail pending trial unless there are compelling reasons for refusing bail.’

8. Here no attention has been given to the factors the court considered in the previous two decisions declining bond. Instead, 3<sup>rd</sup> accused is content to say that, since his father is willing to stand surety for him, he should be admitted to bail. I must state that the mere willingness of a person to stand surety is not a material factor for consideration in bail applications. Definitely not for purposes of review of an earlier order. The applicant here needed to have addressed the court’s concerns about commitment to attend court at the trial owing to the nomadic life that questions his fixed abode. I do find that no change of circumstances has been revealed to merit the court revisiting its orders declining bail.

9. On the need for a favourable environment to help mitigate his medical conditions, I do not doubt the authenticity of the medical report, but take the view that the 3<sup>rd</sup> accused can still access medical services while in remand, at the prison medical facilities and even at the Meru Level Five hospital, who says he has been there on follow-up.

10. In the end, I find that the accused has undoubtedly failed to prove the change of circumstances to warrant review of the earlier orders denying him bond. It remains the law that the purpose of bond and its terms is to guarantee the presence of the accused persons at subsequent proceedings. In this case. Sadly and for the reasons enumerated above, such guarantee is non-existent.

11. The upshot from the foregoing is that the application dated 25/1/2021 lacks merit and hereby dismissed.

**DATED SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF AUGUST 2021**

**PATRICK J.O OTIENO**

**JUDGE**

**In presence of**

Mr. Otieno C for the 3<sup>rd</sup> accused

Mr. Maina for the state

**PATRICK J.O OTIENO**

**JUDGE**