



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO. E002 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**RAPHAEL WACHIRA KARIUKI.....ACCUSED/APPLICANT**

**RULING ON REVIEW OF BAIL**

1. The 2<sup>nd</sup> accused together with four(4) others were released on bail of Kshs.1,000,000/= with one surety of a like amount on 2/04/2021. The case was later withdrawn against some of the accused persons while two of them pleaded guilty to a lesser charge on plea bargaining and were sentenced accordingly. This leaves only the two accused persons whose case is pending hearing and determination in the numerical position of the 1<sup>st</sup> and the 2<sup>nd</sup> accused.
2. The 2<sup>nd</sup> accused herein was formerly the 4<sup>th</sup> accused in the original charge. Mr. Macharia representing the 2<sup>nd</sup> accused herein made an application for review of bond terms on the ground that the 2<sup>nd</sup> accused has failed to get a surety of the amount of Kshs.1,000,000/= and urged the court to reduce bond amount to Kshs.500,000/= with one surety. The other ground relied on is that during the period of remand, the accused who has type II diabetes and currently under insulin treatment has his condition continuing to deteriorate. He is also under the risk of contracting Covid -19 disease if the terms of bond are not reviewed to make it easier for him to get a surety.
3. The defence criticised the allegation by the prosecution in its affidavit of opposition that the 2<sup>nd</sup> accused if released on bail is likely to interfere with witnesses.
4. In opposition, the prosecution further stated that the bail terms are commensurate with the serious nature of the charge the accused is facing and that his diabetes condition is manageable in prison.
5. The main issue for determination is whether the grounds for review as presented justify the exercise of this court's discretion to review the terms of bail.
6. Basically, this court had considered all the issues raised in the original application for bail and come to the conclusion that no compelling reasons had been established not to release the accused persons in this case on bail. One of the issues raised was that of interfering with witnesses. The said issue ought not to have been raised again herein for it is not backed by any new evidence. In my view, the issue was exhaustively dealt with and determined and is in my view irrelevant in this review application.
7. The 2<sup>nd</sup> accused attached treatment notes showing that he is a known diabetic patient on insulin as well as having other minor conditions. This means that being a known diabetic patient by 04/05/2021 when he visited the doctor, was diabetic when he was first remanded in prison about 4 months ago. No medical report was attached to show the medical condition of the 2<sup>nd</sup> accused and the period of the diagnosis. However, in the supporting affidavit, the accused states that he suffers from underlying conditions including diabetes which has since deteriorated.
8. In an application of this nature, the accused ought to demonstrate that new and important matters have arisen since he was released on the existing terms which he has not established save for the issue of the deterioration of the said condition that would have been best confirmed by a medical report.
9. In my view, the failure to meet the terms set by the court is not ground for review unless the conditions are too stringent and unreasonable. This is not the case herein. The bond of Kshs.1,000,000/= with one surety is reasonable and fair given the serious nature of the offence and the circumstances surrounding its commission as earlier narrated by the prosecution.
10. The defence cited the case of **R.V Naomi Nchesa Sanya & Another [2020] eKLR** where the accused had been released on bond of

Kshs.2,000,000/= with one surety of a similar amount or Kshs.1,00,000/= with two sureties of a similar amount. Wakiaga J reduced the terms of bond on grounds that the terms were stringent and that the accused was not able to raise a suitable surety . The said case of Nchesa is distinguishable from the one before me in that the terms herein are reasonable which the accused would be able to raise with a little more effort.

11. However, I am alive to the fact that the paramount consideration in granting or in review is whether the accused person will attend trial. The first accused has already raised a surety and is now out on bond. I am persuaded by only one factor that during these Covid-19 period, the court may apply special measures to decongest prison with a view of reducing the risk of spread of the pandemic. Such measures must address the issue of securing court attendance.

12. For this one and only reason, I hereby allow this application for review in the following terms:-

a. That the 2<sup>nd</sup> accused is hereby released on bond of Kshs.500,000/= with one surety of like amount and alternatively on cash bail of Kshs.350,000/=

b. The other conditions set by the court on 25/04/2021 will apply herein.

13. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2021**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered through video link this 30<sup>th</sup> day of September 2021**