



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. E037 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

GUYO DIBA JIRMA.....1ST ACCUSED

NURA HUKA GALGALO ALIAS TOM.....2ND ACCUSED

NURA ADAN HASSAN.....3RD ACCUSED

ALI WAKO ADAN ALIAS GIROO.....4TH ACCUSED

RULING

1. The 1st and 4th accused persons have filed two separate applications seeking the variation of the bond terms imposed on the 12/7/2021 be varied to the extent that the two be permitted to visit Isiolo County being their resident and place of work.
2. Both applicant contend that the restriction against visiting Isiolo County has forced them to live away from home at a cost which has become too expensive and unbearable. There was also a complaint raised that no reason was assigned for the imposition of the restrictions on their right to free movement and therefore the restriction was not justifiable.
3. The application was not opposed but supported by the prosecution who left the matter to the court. The applications were however vehemently opposed by the victim who filed an affidavit by a son to the deceased. His opposition was that their circumstances have not changed to warrant the variation and that the two accused persons remain people of influence in the community who have been pushing to have an out of court settlement which proposal is not acceptable to the family.
4. The affidavit stressed that the court took into account the questions raised regarding interference with witnesses to come to the conditions it imposed.
5. The applicants and the victim lawyer filed respective submissions in arguing the application. The submissions are on point on consideration to be taken into account on an application for variation of bond terms. In those submissions the 4th accused makes a concession that he is prepared to avoid his Isiolo home where the victim's family lives but be allowed to visit Kiina and Merti where he grazes his livestock.
6. The submissions when read reveal that the request for variation is largely on the position that the condition imposed are unreasonable not that the conditions on the ground have since shifted. The decisions in **CYRIL KIPRUTO SEREM Vs R(2020) Eklr RAMADHAN IDDI MAMADAAN VS R (2019) Eklr** were cited for the proposition that conditions on bail should be reasonable and not seen as a back door to denial of bond by putting conditions that are difficult to meet so as to deprive the accused of his liberty and bond terms seen as a punishment prior to conviction.
7. For the 1st accused the position adopted in the submissions is that the conditions on bond imposed by the court were tantamount to deprivation of the accused his liberty contrary to the presumption of innocence under the constitution. In addition it is contended while relying on **Rep Vs Devight Sagaray HCCR NO. 61 OF 2012** that the duty is upon the prosecution to prove danger of interference with witnesses and that the restraint for visiting Isiolo negated on his right to free movement and residence.
8. For the victims, the stand taken is that there has not been demonstration that the terms were unreasonable just like no demonstration was made that the circumstances have since changed. He cited to court the decision in **Republic Vs Arumoi Lemironi (2016) Eklr AND**

Caleb Nafula Odinga Vs R (2021) for the proposition that the charge faced by the accused must be taken into and terms should be commensurate therewith and that the grounds upon which variation is made must be proved. The provisions of section 123 A ((1) Criminal Procedure Code was also cited on the factors to be considered in granting bail.

9. I have considered the submissions offered. The parties and I see my task to be limited to answering the question whether a demonstration has been made out that justifies the variation of the bond terms relating to the bond of 1st and 4th accused from visiting Isiolo County.

10. That task doesn't call for revisiting the duty and consideration for grant of bail that is now past.

11. While bond has been granted on terms, the terms imposed were imposed by the complaint raised by the prosecution but later abandoned but taken up the victims that being influential members of the society, the two accused persons/applicant had the capacity and ability to interfere with witnesses. That has been reiterated here that there is pressure put upon the family to abandon the case and agree to an out of court settlement. I still consider that to be a good reason to restrict prospects of the two accused getting into close contact with the witnesses.

12. However, I also appreciate that restricting the accused persons from visiting their homes come at a costs. That is the difficulty the two now seek the court assistance to be obviated.

13. I do not consider that an unreasonable request even on the face of the fears of the victims. I therefore close to balance the two very genuine concerns. The balance I see to be able to serve the justice of the case keeping the witness safe from interference and relieving the two applicants of the costs of having to live out of home is that the two be free to go back to their respective homes within Isiolo South Sub County but shall not visit any locality within Isiolo North Sub County as offered by the 4th accused.

14. The restraint on contacting the witnesses and any family of the victim remain pending the conclusion of the matter.

DATED AND DELIVERED THIS 21ST DAY OF DECEMBER, 2021

PATRICK J.O OTIENO

Judge

In presence of

Maina for prosecution

Mr. Kariuki for the 4th accused

Mr. Jarso for the 1st accused

No appearance for Abubakah for victim.

PATRICK J.O OTIENO

JUDGE