



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 27 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

MICHAEL KARANJA IRUNGU.....ACCUSED

RULING

1. **MICHAEL KARANJA IRUNGU** was charged with the offence of murder. He pleaded not guilty. His trial commenced on 12th February, 2020. The trial has yet to be concluded.

2. On 17th October, 2018 the court granted the accused bond on the following terms:-

(a) *The accused to deposit cash bail in the sum of Kshs.100,000/-.*

(b) *In addition to (a) above the accused to execute a personal recognizance in the sum of Kshs.500,000/=.*

(c) *In addition to (a) and (b) above, the accused to furnish two sureties each of them in like sum of Kshs.500,000/=.*

(d) *The accused person to report to the deputy Registrar of this Court during monthly mentions without fail, on the dates given by the court.*

(e) *The accused is ordered to refrain from contacting communicating with or in any way reaching out to any of the prosecution witnesses, including the deceased's daughter A.N.N. or any other member of the family of the deceased.*

3. The later condition of bond was based on the information the court received from the Investigating Officer P.C. Kyalo that the accused knew 10 of the prosecution's witnesses and there was the likelihood of the accused interfering with those witnesses.

4. The accused has applied by his Notice of Motion, application dated 18th October, 2021 for review of those bond terms. The ground upon which he seeks the review is that he has failed to meet the conditions of his bond terms, now for three years. Further that he is not a flight risk and the prosecution's witnesses, whom he knew, have by now re-located.

5. The accused was required, in seeking review of his bond terms, to show that the circumstances of the case have changed. There are two cases I will cite on this point.

6. The first case is **REPUBLIC VS. FRANCIS MAINA WAIRIMU (2002) eKLR** thus:-

“In an application for review of the denial of bail the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”

7. The second case is **REPUBLIC VS. DIANA SULEIMAN SAID & ANOTHER (2014) eKLR** where the holding was:-

“The changed circumstances test is one of a 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 favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accuse”

8. The circumstances of the accused’s case have not changed. The accused, as the pre-bail probation report reveals, was arrested several months after the alleged offence. The court in granting the bond terms on 17th October, 2018 noted that the accused was a flight risk. Further, the Investigating Officer deponed in his affidavit dated 11th July, 2018 that the accused knows 10 prosecution’s witnesses. All those factors have not changed and it follows that the review of bond terms the accused seeks cannot be granted. It is declined. The notice dated 18th October, 2021 is dismissed.

9. At the reading of this Ruling, a further hearing date for the prosecution’s case will be fixed.

10. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

FOR DPP :- KATHAMBI/KASYOKA PRESENT

FOR ACCUSED :- MR. JUMAHIS BRIEF HELD BY MR. WAWERU

ACCUSED MICHAEL KARANJA IRUNGU PRESENT

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE