



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 50 OF 2019

BETWEEN

REPUBLIC..... PROSECUTOR

VERSUS

VICTOR MUSOMI MOGAKA.....ACCUSED

RULING

1. **VICTOR MUSOMI MOGAKA** has applied by his notice of motion dated 28th June, 2021 for review of bond terms granted by this Court's Ruling dated 11th February, 2021. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He pleaded not guilty.

2. This Court on 11th February, 2021 ordered the accused to be released on bond of Kshs. 2million with two sureties of similar amounts. The accused by his application stated that he has been unable to meet the bond terms and that the said bond terms are excessive to amount to denial of bail.

3. In presenting his application for review of bond terms, the accused did not state the changed circumstances which would lead to this Court to review the bond terms. This is the jurisprudence in cases where a party seeks review of bond terms. In the case **REPUBLIC VS. FRANCIS MAINA WAIRIMU (2020) eKLR** the court had this to say.

“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.”

4. Similarly, in the case **RPEUBLIC VS DIANA SULEIMAN SAID & ANOTHER (2014) eKLR** it was held as follows:-

“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 accused”

5. The accused having failed to demonstrate changed circumstances, his Notice of Motion application dated 28th June, 2021 is declined. It is dismissed.

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

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For DPP :- **Kathambi/Kasyoka Present**

For Accused :- Ms. Nyatichi

Accused :- **Victor Musomi Mugaka present**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE