



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 17 OF 2017

REPUBLIC..... PROSECUTOR

VERSUS

ANTONY BARASA WAFULA.....ACCUSED

RULING

1. The Accused **Antony Barasa Wafula** is charged, in this case, with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. That offence occurred on 22nd February 2017. The Accused's trial commenced on 20th July 2017. Prior to that date the Accused's application for bail was held in abeyance until the prosecution's vulnerable witness testified.

On 18th September 2017 the court admitted the Accused on bail on the following terms:

(a) *Personal recognizance in the sum of KSh.500,000 and one surety of similar sum.*

(b) *Accused to report to the Deputy Registrar every last Thursday of every month.*

2. It now does seem the Accused was unable to meet the terms of his release on bail because on 9th November 2020, after he made the election that the trial should proceed before me from where it stopped before **Justice Meoli**, the accused requested that his bail terms be reviewed by being reduced to cash bail of KSh.100,00. The state opposed that review on the basis that the terms of bail, as they are, are commensurate to the charge of murder.

3. Undoubtedly the seriousness of the offence ought to be a consideration when the court is considering a bail application, or as in this case where the court is considering revision of bail terms. This indeed was what was stated by **Justice C. Meoli** in the case

Maurice Amugumbi Jumba v Republic [2019] eKLR thus:

*"Hence the caution in **Watoro v Republic (1991) KLR 220** as cited by **Achode J.** in **George Kamau's** case: -*

"The seriousness of the offence in terms of the sentence likely to follow a conviction has been held repeatedly to be a consideration in exercising discretion.... What I think is important for the court to bear in mind, and reason for the caution to remember the presumption of innocence, is that, it would be wrong to leap to the conclusion that the accused was guilty because has (SIC) been charged and decide the bail application on that basis."

4. In that case the court further stated:

*"There must be a balance between the presumption of innocence and the nature of the offence, as observed by **Ibrahim J** (as he then was) in **Philip Anyanya v R (2010) eKLR***

"Whatever the court will decide, the fear and anxiety exerting on an accused's mind during the trial in a murder case cannot be ignored. The possibility of thinking of flight by an accused person facing a capital offence is real and cannot be wished away. It is therefore true that the seriousness of an offence and the sentence for which is possible upon conviction is a matter which can bear on the accused and can affect his decision to attend trial or not."

5. It is with the above sentiments in mind that I agree with the submission made by the state that the bail terms granted to the Accused on

18th September 2017 are commensurate to the charge he faces. There is no basis in my view for reviewing those terms.

For the above reasons the application to review bail terms is declined.

SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF NOVEMBER 2020.

MARY KASANGO

JUDGE

17th November 2020

Before Justice Mary Kasango

C/A - Kevin

Accused: ANTONY BARASA WAFULA - Present

For Accused - No appearance

For the State - Ms Kathambi

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE