

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 15 OF 2017

FRANCIS MUTETI MULI.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Learned counsel for the defence has urged this court to review the ruling earlier delivered regarding the need to grant bond to the accused pending the trial herein. It was submitted that the prosecution should accept that the accused should be granted bond or else the last orders of adjournment be invoked and they be ordered to close their case. Further, it was submitted that the last order of adjournment have not been appealed against. It was also submitted that the prosecution has not given reasons why the remaining witnesses have not been bonded. Finally, it was submitted that the rights of both the accused and the victim should be balanced and that the court has power to give stringent terms of bond.

2. Learned counsel for the state submitted that they had not sought for adjournment in the past for non availability of witnesses and that during the last court session the state had indicated the defence could obtain bond pending trial if the civilian witnesses would not have been bonded. It was submitted that all the civilian witnesses have since testified leaving four police officers and a doctor. Finally, it was submitted that the fine bail report indicated that the situation in the village is still volatile which should be factored into consideration by the court.

3. Learned counsel watching brief for the family of the deceased opposed the release of the accused on bond as the family of the deceased has been threatened as the wife of the deceased is unable to visit her home due to the threats. Counsel added that the adjournment should not be tied to the issue of bond as it is not possible for the defence to negotiate for bond in exchange for a concession to an adjournment. Finally, counsel urged court to retain the earlier orders given in the ruling.

4. I have considered the sentiments of all learned counsels for the parties herein. It is not in dispute that vide this court's ruling dated 17-1-2019, the defence request for review of bond was declined and that the defence was at liberty to review the application for review of bond once all the prosecution witnesses have testified. It is also not in dispute that this court granted the prosecution a last adjournment on the 10-7-2019. On the 1/04/2019, the prosecution availed three witnesses and indicated that it was now left with four police officers and a doctor. This then means that all the civilian witnesses have testified. The defence wishes to review their quest for release on bond in consideration for an adjournment being sought by the prosecution. This has been vehemently opposed by the state and family of the deceased on the ground that the situation at Thinu village is still volatile as some of the perpetrators are still at large. The issue for consideration at this stage is on the aspect of adjournment and renewal of an application for bond/bail.

5. As regards the issue of the adjournment sought by the prosecution, I note that the state was riding on a last adjournment starting from the 10-7-2019. Even though the state has maintained that it has not sought several adjournments in the past I find that it is still their responsibility to avail witnesses in order to prove the charge against the accused. The ideal situation is that once a case is filed in court it should be heard from day to day until it is finalised. I note that already eight witnesses have testified with four more to be called. Even though a last adjournment had been granted herein the court still retains the discretion to allow adjournments as and when depending on the circumstances and the justice of the case as presented to the court by the parties. The reasons advanced by the state regarding the remaining witnesses merits consideration. The request for adjournment by the state ought not to be tied to the defence quest for bond as the circumstances of each party in the case are diametrically opposed and that each must be considered separately since each case must be determined on its own merits. The prosecution has already called all the civilian witnesses and one police officer and are now left with police officers and a doctor. It seems to me that following the previous rulings, the prosecution had concentrated on presenting civilian witnesses first before calling the police officers. I am unable to fault them for doing that. The three witnesses called today have tendered their testimonies which went on upto around 4.00 pm and as such even if there would have been more witnesses the matter would not have been wrapped up by close of court's business at 5.00 pm. Consequently, I am inclined to grant the prosecution the adjournment sought but order that the last orders of adjournment shall continue to remain in force.

6. As regards the issue of review of bond I note that this court had directed that the same be made once all the prosecution witnesses have testified. There are four more witnesses so far to be called by the prosecution. It has also transpired that the situation in Thinu village is still volatile and has not improved as the threats to the family members of the deceased are still there. That being the position, I find that circumstances have not changed to warrant an order for consideration of bond pending trial at this juncture. The defence request is hereby declined. An early date be allocated for the reception of the testimonies of the remaining witnesses.

Dated and delivered at **Machakos** this **2nd** day of **August, 2019**.

D.K. Kemei

Judge