



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 7 OF 2014

REPUBLIC.....PROSECUTOR/APPLICANT

-VERSUS-

JAPHET KOBIA1ST ACCUSED

JAMES KIUNGA2ND ACCUSED

GODFREY KARITI.....3RD ACCUSED

SIMON MUTUA.....4TH ACCUSED

RULING

1. When denying the accused bond in its ruling delivered on 29th May, 2014, the court held ***“It is my view that releasing the accused persons on bail at this time will send a wrong message especially to the deceased family and witnesses in this case. That act alone can cause panic and serve as intimidation especially to potential witnesses”.***

2. On 12th May, 2015, the court reviewed its earlier ruling and held that there was no evidence that the accused were to interfere with witnesses. All that the prosecution had done was to speculate about the issue of possible interference of its witnesses.

3. On the 9th October, 2018, when the matter came up for further hearing, Mr. Gitonga Learned prosecutor applied that the bond of the four accused be cancelled on the grounds of their having interfered with the prosecution witnesses. That the 1st and 2nd accused had on 7th August, 2018, visited **PW2** and severely warned her against pursuing justice for her husband, the deceased. This is after she had testified before this court.

4. After making the application, Mr. Gitonga put on the stand **PW3 Gideon Mwiti** who gave a harrowing experience on how he had ended up having one of his hands severed because of being a potential witness in this case. He on his part blamed one **Sebastian** whom he alleged to be an accomplice of the accused. He also testified that last year after the accused had been released from custody, they raided the home of the victim's relatives and burnt their houses. That the matter was reported to Mikinduri Police Station. There had been no progress in the investigations.

5. On being summoned, the OCS Mikinduri Police Station **CIP Charles Mwangi** appeared and told the Court how a report was made by **PW2** at Mikinduri Police Station on 8th August, 2018. The report was by **PW2** alleging that the accused had visited her home and threatened her. That on making further investigations, the OCS confirmed that: -

- a) reports had been made to the station of threats but no effective action had previously been taking leading to the matter to be investigated by vigilance house;
- b) the community was living in fear of reprisals from the accused and their accomplices;
- c) **PW2** no longer lives in her house but she is housed elsewhere by someone whose particulars cannot be disclosed for her security;
- d) here were several cases pending in Tigania Law Courts arising from the present case;
- e) he had already recommended a charge of threatening to kill contrary to **section 223 of the Penal Code** against the accused persons to the Office of the DPP and was waiting the DPP's directions;

f) That the accused continued to be a threat to the witnesses so long as they remained free.

6. I have carefully considered the application and the rival contentions by the parties. This is an application for cancelling the bond of the accused persons. The provisions of **Article 49 (1) (h) of the Constitution** provide that an arrested person may be released on bond or bail on reasonable conditions pending trial unless there are compelling reasons not to be released. The accused are already out on bond. It is a right that has already enured unto them and they are already enjoying the same.

7. One of the compelling reasons when bond can be denied, and therefore cancelled is interference with witnesses. In **Rep Vs. Dwight Sagaray & others High Court Criminal Case No. 61 of 2012**, when considering the issue of the likelihood of an accused to interfere with witnesses, Korir J held:-

“For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others.”

8. Further, in **Republic v Joktan Mayende & 3 others [2012] eKLR**, the court held:-

“..... Interference with witnesses overs a wide range; it can be immediately on commission of the offence, during investigations, at inception of the criminal charge in court or during the trial; and can be committed by any person including the accused, witnesses or other persons.”

9. In this case, **PW3** and the OCS Mikinduri Police Station testified that, the accused together with others not before court have threatened and physically harmed the witnesses with the intention of preventing them from being keen in following up this case. The court also observed that there is hostility in the deceased family as evidenced by the complaint and investigations made against the family of the deceased on the complaint of malicious damage by the 4th accused. **PW 3** had his own hand severed to prevent him from testifying in this case. As result he had moved away to Naari where he is currently living.

10. Even after the prosecution offered the OCS of Mikinduri Police Station who testified and was thoroughly cross-examined, the accused did not offer to contradict the evidence offered. Indeed, there was no denial that the 1st and 2nd accused visited **PW2** and threatened her. Further, the testimony of **PW3** that the accused had invaded and burnt the houses belonging to the relatives of the deceased after they were released on bond was never challenged or denied.

11. All that was presented and proved by the prosecution was a well-organized scheme that is meant to scuttle the prosecution through unlawful means. That must be stopped immediately for the ends of justice. The same way the accused have the right to conduct their case while enjoying their liberty, it is the same way the victims are entitled to protection and safety pending their testimony in court and even after.

12. In this regard, I find that the prosecution has proved the existence of compelling reasons why the bond of the accused should be cancelled.

13. In the premises, the bond of all the accused is cancelled. All accused persons are to be held in custody until the hearing and determination of this case.

It is so ordered.

DATED and DELIVERED at Meru this 29th day of November, 2018.

A. MABEYA

JUDGE