



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NUMBER 18 OF 2017**

**JOSEPH MUSEMBI MWOKI.....1<sup>ST</sup> APPLICANT**

**FRANCIS GITHINJI NGIGE.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

I have considered the rival submissions. I take note that the 1<sup>st</sup> Applicant's bail terms were enhanced after the charge was substituted from conspiracy to commit a felony to one of attempted murder. The current charge sheet though does indicate that the 1<sup>st</sup> count is also the offence of conspiracy to murder contrary to **Section 224 of the Penal Code**. Taking into account that bail terms must be commensurate with the offence(s), there was no irregularity in the magistrate's decision to enhance the bail terms. The contestation though is that the enhancement of the bail only affected the 1<sup>st</sup> Applicant, Francis Githinji. That fact was not disputed by the Respondent. Surprisingly, a copy of the ruling enhancing the bail terms is not in the original record of proceedings. The 1<sup>st</sup> Applicant has however paid the enhanced bail terms. He has come to this court because he feels that the trial court was biased against him in enhancing bond only in his respect. Furthermore, the terms placed on the bond were too high and unjustified.

This court is of a similar view that if bond were to be enhanced it ought to have applied to both Applicants because they are charged with similar offences. The learned trial magistrate cannot in any way justify enhancement of bond for one accused and not the other when the charges they face are similar. Although an issue arose about intimidation of witnesses, and in fact extended to threat to life of one of the witnesses, that fact could not be ascertained with the evidence placed before the court. In any case, learned state counsel in opposing the application did confirm that the witness who was allegedly killed was indeed killed by police, though in mysterious circumstances. The culprit was indeed under investigations by IPOA. It is my view then that the administrative action taken to enhance bail only against the 1<sup>st</sup> Applicant was unfair and irregular.

Consequently, this court sets aside the order enhancing the bond of the 1<sup>st</sup> Applicant to Kshs. 700,000/=. The security documents deposited in satisfying the bond shall be released to the registered owner. I substitute the bond terms with an order that the original bail terms granted to the 1<sup>st</sup> Applicant remain. For avoidance of doubt, the record shows that both Applicants were released on a cash bail of Kshs. 80,000/= which I order remains the bail terms for both of them. It is so ordered.

**Dated and Delivered at Nairobi this 3<sup>rd</sup> day of August, 2017.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

- 1. Masaviru for the Applicants*
- 2. Mr. Ndwiga for the complainant*
- 3. M/s Sigei for the Respondent.*