



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 45 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ANTOINETTE UWINEZA ALIAS

MICHELIN UWABABYYI1ST ACCUSED/APPLICANT

ALEXANDER KIOLE MUTIE.....2ND ACCUSED/APPLICANT

KASSIM OYAMO ODIWUOR

alias ODI.....3RD ACCUSED/APPLICANT

RULING

1. The three accused in this case were granted bail by this court vide a ruling dated 4th March 2014. Following the ruling the 1st and 2nd accused met the conditions attached and were released from custody. The 3rd accused has however not been released to date for failure to meet the condition that she deposits her passport with the court.
2. On 12th November 2015 Counsel for the 3rd accused made an application seeking a review of the bail terms. He asked the court to remove the condition that the accused deposits her passport with the court. He explained that the accused has been unable to access her passport because the one she had expired while the renewed one was sent back to her country Rwanda while she was in custody. This Ruling is in respect of this application.
3. Following the application, **Mr. Okeyo** for the prosecution sought time to take instructions. The same was granted by the court. Mr. Okeyo subsequently responded to the application on 30th November 2015. He submitted that the State was not opposed to the condition respecting the passport being dropped as it was aware of the difficulties faced by the accused in accessing the said passport. He, however asked the court to enhance the cash bail and increase the sureties. He also sought an order that bars the accused from leaving the jurisdiction of the court.
4. I have considered the application. The primary purpose of bail is to ensure that the accused attends trial. In this case, the court imposed a condition that the accused deposits her passport with the court to ensure that she does not leave the jurisdiction of the court and thereby abscond trial. The record however shows that the accused has had difficulty accessing the passport. Even the

investigating officer in the case armed with an order of this court issued on various dates has not been able to access the said passport either at the Foreign Affairs Ministry or at the Rwandan Embassy.

5. Following the above, I am persuaded that it would not be fair to maintain a condition that is prima facie unattainable. To do so would amount to denial of bail which the court has already granted. I will therefore remove the condition on the passport but enhance the sureties to ensure that the accused who is a foreign national remains within the jurisdiction of this court and attends trial.

6. In the premises I order that the 1st accused:-

i. Enhances the cash bail from Kshs.800,000 (already paid into court) by Kshs.200,000 to Kshs.1,000,000.

ii. Provide 3 Kenyan sureties of Kshs.1,000,000 each.

iii. Provides full physical address of her intended residence in Kenya upon released, and inform the court whenever she changes such address.

iv. Shall attend court whenever required and shall not leave the jurisdiction of the court until the case is concluded.

7. In addition to the above conditions, I hereby issue an order directed at the Principal Secretary responsible for Immigration that the accused Antoinette Uwineza alias Michelin Uwababyi, a Rwandan National, and 1st accused in this case, be barred from leaving Kenya until her on going trial is concluded. This order be circulated to all exit points. It is to be executed through the investigating officer in the case.

Orders accordingly.

Ruling delivered and signed at Nairobi this 16th day of February, 2016

R.LAGAT-KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused

.....: Counsel for Accused

.....: Counsel for the State