

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 84 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

NAHASHON MUCHIRI MUTUA.....ACCUSED

RULING

The accused has come to this court to seek review of his earlier application to be released on bond pending the hearing and determination of this case. He is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that he killed Martin Koome Manyara on 19th December 2013 at Ruaraka Police Station. By a Notice of Motion dated 1st July 2016 and filed on the same date the accused cited various grounds in support of this application including his constitutional rights to bail; his young family that depends on him; his willingness to adhere to the terms and conditions of bail and not interfere or intimidate witnesses; his medical condition which he says cannot properly be handled in prison; the presumption of his innocence until the contrary is proved, etc.

The application is opposed on grounds advanced in the earlier applications for bail. In the affidavit in objection, the prosecution states that the accused is now aware of the case against him after the evidence has been given and may be tempted to abscond and that the witnesses are still in danger of interference and intimidation. It was further stated one of the witnesses who has already testified has been threatened and has been placed under witness protection.

I will not belabour the point in this application given that this is not the first time the issues raised in this application have been canvassed. This court has handled similar applications before. In its ruling delivered on 23rd November 2015 this court stated as follows:

“I find that I am persuaded that there exists compelling reasons to deny the accused bail/bond at this stage. It is crucial to secure evidence of key witnesses first. The medical condition of the accused can and will be attended to while he is in custody. Consequently, his application for bail is hereby declined. The same can be reviewed after all the key witnesses have testified”

Shortly after the ruling was delivered, the accused moved the court again for review of the application for bail. This prompted the court to give its ruling on 22nd February 2016 that the accused had not shown reason why the court should review its earlier application. The application for review was also declined. I called for a report from the doctor on the number of physiotherapy sessions the accused was required to attend. This court was informed that the accused required two sessions per week. It was so ordered. Due to the challenges in executing that order this court summoned the Officer in Charge of Nairobi Remand in Industrial Area to show cause why that order of the court was not executed. On 13th April 2016 on Joshua Omboki attended court before Hon. Lady Justice Lesiit and explained the circumstances. Following his explanation the court, Lesiit J, was satisfied with the explanation and made the following order:

“Going forward the Nairobi Remand is ordered to take the accused to KNH twice a week as required. Where a deferral will be found necessary, the Nairobi Remand is ordered to inform the court of the deferral and the reason for it for every session the accused misses.”
(sic).

This case was listed for hearing from 6th to 16th June all inclusive. This court directed that the protected witnesses be summoned first in order to have their evidence taken to pave way for the review of bond terms. We covered some ground in those two weeks. However, the defence applied to visit the scene and recall certain witnesses to be cross examined at the scene. This was granted. This turn of events changed the landscape for the accused. Although this court had taken the evidence of all the protected witnesses, the application to recall them meant that these witnesses were still required by the court and were still prosecution's key witnesses. On 18th July 2016 this court was assured by the prosecution that all the key witnesses have testified save for the ones who will be recalled on application by the defence.

I have considered this application and the cited authorities. I have considered the affidavits in objection and the oral submissions of all counsels including Mr. Mbaya counsel for the victim family. I find nothing new in the application by the accused. The status quo remains that this court has not finished taking evidence from the key witnesses. There is nothing new that the accused has advanced to this court that was not addressed during the earlier applications. The view of this court is that once the remaining key witnesses testify, the accused may apply for review of bail/bond and the court may then determine whether the accused should be released on bail/bond and if so what under what terms.

The defence did not raise issue of failure by prison authorities to implement this court's order in respect of accused's medical issue. It was mentioned in passing that the accused is suffering due to his sickness. I would have expected the defence to be raising issue with the implementation of the earlier court order to have the accused attended medically. The orders of this court are clear as captured above. The accused is supposed to be taken for medical sessions twice per week and where deferrals are necessary this court is to be informed of the same.

This case is coming up for hearing on 31st August 2016 and 1st September 2016 when the court will visit the scene and probably wind up with the protected witnesses. I find that in the meantime, nothing has been advanced in my view to persuade this court to change its earlier orders. Consequently, I decline to grant this application and it is so ordered.

Dated, signed and delivered in open court this 28th day of July 2016.

S. N. Mutuku

Judge