



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 84 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

NAHASHON MUTUA.....ACCUSED

RULING

This is a ruling in respect of an application by the accused to review bail/bond application. The accused in this case is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that the accused murdered Martin Koome Manyara on 19th December 2013 at Ruaraka Police Station in Nairobi County. This is not the first time the accused is approaching the court on this issue. There are numerous applications from the defence on the issue of bond. A re-visit by this court of this court's ruling in respect of the first bail application by the accused will put this matter into perspective.

In that ruling delivered on 23rd November 2015 this court declined to admit the accused to bail for the reasons that there was likelihood of interference with prosecution witnesses. This court pronounced itself 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 the 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 upon this court being moved by the accused and/or his counsel.”

The court record shows that the accused has approached the court on other occasions seeking to review those orders and admit him to bail. This court, in declining to grant bail, has maintained that the evidence of the crucial witnesses be secured first before the court could consider admitting accused to bail.

So far this court has received evidence from fourteen (14) prosecution witnesses. A number of these witnesses are under Witness Protection. At the conclusion of today's court session, the Prosecution Counsel informed the court that the remaining witnesses are police officers and the doctors. As expected the accused renewed his application to be admitted to bail relying on the fact that the protected witnesses have now testified. The application was opposed by the Prosecution Counsel who told the court that the accused is a senior officer in the Kenya Police Service and has some influence on the junior officers who were working under him at the Ruaraka Police Station and that there was apprehension that the accused may interfere with these police witnesses. Counsel cited PW14 as having been scared of attending court until he was picked in a government vehicle. This court was not informed, until now, that the reason PW14 was not in court when required was because he was afraid to travel on public means. Counsel urged the court to safeguard the integrity of the trial by exercising its discretion in declining to allow this application.

Mr. Mathenge, counsel watching brief for the family of the deceased, addressed the court and invited the court to consider Paragraph 4.9(b) and (c) of the Bail and Bond Policy Guidelines in addressing the application.

I have considered this application and the opposing views from the prosecution side. I have read Paragraphs 4.9(b) and (c) as submitted by Mr. Mathenge. They relate to the strength of the prosecution case and the character and antecedents of the accused person. I have taken into account the Paragraph cited. This trial is not concluded and more witnesses are yet to testify. In my understanding and as informed by the Prosecution Counsel, all the protected witnesses have testified. His only fear is that the police officers who were working under the command of the accused person may be interfered with and/or influenced by the accused. This fear is genuine in my view, but again, it may seem as though this court is shifting goal posts in its consideration to admit the accused to bail given that this is not one of the reasons advanced in the earlier opposition to bail. The initial concern raised by the prosecution was fear that the accused may interfere with witnesses without specifically singling out the police as some of the witnesses likely to be interfered with. The protected witnesses were the concern of this court as well as that of the prosecution. They have testified. I do not at all downplay the concern of the likelihood that the accused may interfere with the junior officers who worked under him. My only issue with this argument is that it did not form part of the earlier submissions in opposing bail application.

I have considered the reasons advanced by the accused in support of his application. One of these was that he was willing to remain in Mariakani in Kilifi County where his family lives and that he was stationed at Machakos County following his transfer from Ruaraka Police Station. The case facing the accused is grave but until all evidence is received and evaluated by this court to arrive at a conclusion that the case against him has been proved beyond reasonable doubt, the law still presumes him as innocent. I am alive to the rights of the victim which this court must balance as against those of the accused. I am persuaded that going by the earlier ruling of this court in this matter that the protected witnesses have testified, I will and do hereby allow this application and admit the accused to bail on the following terms and conditions:

- (i) The accused shall execute a bond of Kenya shillings three millions (Kshs 3,000,000) with two sureties of similar amount each.
- (ii) In the alternative the accused shall deposit cash bail of Kshs 1,500,000 with the Registrar of this Court.
- (iii) The accused shall not visit Ruaraka Police Station during the pendency of this case.
- (iv) The accused shall not contact any witness in this case during the pendency of this trial.
- (v) The accused shall remain in Mariakani in Kilifi County where his family lives and shall only leave that jurisdiction when attending court sessions in this case or mentions of this case as shown in (v) below or with full and express authority of this Court upon his presenting reasons for the need to leave the said jurisdiction.
- (vi) The accused shall attend hearings of this case on the dates fixed and monthly mentions of this case before the Deputy Registrar of this Court until his case is fully heard and determined. The first such mention before the Deputy Registrar shall be on 20th January 2017.
- (vii) The accused is cautioned that breach of any one of these terms and conditions of bail shall result in immediate cancellation of bond without recourse and remand in custody for the remainder of this trial.

Orders shall issue accordingly.

Dated, signed and delivered in open court this 21st day of December 2016.

S. N. Mutuku

Judge