



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 83 OF 2013

REPUBLIC.....APPLICANT

VERSUS

1. HILLARY NDHIWA.....1ST RESPONDENT
2. STEPHEN KARIKO.....2ND RESPONDENT

RULING

The application for bail was renewed by the accused on 18th November, 2014. In urging the application, **Mr. Kaikai** for both accused persons drew the court's attention to its earlier ruling. He submitted that all the civilian witnesses had testified and the fear that such witnesses would be intimidated by the release of the accused was no more.

Ms. Ikol for the prosecution opposed the application. She told the court that while the civilian witnesses had testified, the remaining witnesses who were yet to testify were police officers of junior rank to the accused. She urged the court not to release the accused as the witnesses may be intimidated. She urged the court to allow the prosecution to present such witnesses first. She submitted that there were only a few witnesses left.

In the ruling dated 12th February 2014, the court denied the accused bail having been persuaded that the civilian witnesses were likely to be intimidated due to the circumstances of the case. According to the record, **Ms. Ikol** for the prosecution did inform the court during the trial on 18th November 2014 that the last civilian witness had testified. The defence renewed their application on that basis.

I have considered the application. In so doing, I have taken into consideration my ruling dated 12th February 2014 as well as subsequent proceedings in this matter. I consider the suggestion by the prosecution that technical witnesses will be intimidated to be without merit. It is not founded on fact and amounts to a shifting of goal posts. The court's duty in this respect is to be fair to both parties.

For the reasons stated above, I allow the application on the following conditions:-

- (1) Each accused shall execute a personal bond of Kshs.1million and provide two sureties of like amount.
- (2) Each accused shall not contact any of the prosecution witnesses whether such witnesses have testified or not.
- (3) Each accused to continue attending trial without fail until the conclusion of the case.

Orders accordingly.

Ruling delivered, dated and signed at Nairobi this 29th day of January, 2015.

R. LAGAT-KORIR

JUDGE

In the presence of:

..... Court clerk
..... 1st Accused/Applicant
..... 2nd accused/Applicant
..... For 1st & 2nd applicants
..... For State