

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 45 OF 2013

ANTOINETTE UWINEZA ALIAS MICHELIN UWABABYYI1ST APPLICANT

ALEXANDER KIOLE MUTIE.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The 1st accused in this case was granted bail along with her co-accused pending their trial. For the 1st accused, the court imposed an additional condition that she deposits her passport with the court. She has now filed an application seeking a variation of that condition. In her application dated 27th January 2015 which was prosecuted by her counsel on 28th January 2015 the applicant states that she has been unable to comply with the condition because she does not possess a passport. She has stated in her sworn supporting affidavit that her passport was returned by the Rwandan embassy in Kenya to the Rwanda Immigration office in Kigali.

The State has opposed the application on the one ground that if the applicant's passport is not deposited with the court, she can easily flee the jurisdiction of the court.

I have considered the application. The court record is replete with many applications in respect of the applicant's passport. The court had earlier been informed by the defence that the applicant's passport was awaiting collection at the Rwandan embassy in Nairobi. In response to that application the court did issue on three separate occasions orders requiring the release of the said passport to the court through the Foreign Affairs Ministry and the investigation officer in the case. The last order dated 15th October 2014 directed the prison authorities to escort the applicant to the Rwanda embassy to collect the passport in person. According to the averments in the current application, the passport, which was earlier said to exist, has since been returned to the Rwandan foreign office in Kigali. The averment though is not backed by any official evidence. The only supporting documents filed in court in this respect are a copy of an already expired passport (expired May 2014) and a receipt for payment of fine for loss of a passport dated 29th May, 2013. This change of position by the applicant creates an uncertainty in the mind of the court as to the existence of a valid passport and whether or not the applicant if released shall not access the said passport and flee the jurisdiction of the court. It is to be remembered that the primary purpose of bail is to secure an accused's attendance at trial.

For the foregoing reasons, the application dated 27th January 2015 is rejected. It is however noted that the trial is already underway and the matter has been scheduled for further hearing on 11th to 14th of May, 2015.

Ruling delivered and dated at Nairobi this 23rd day of February, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused

.....: For Accused

.....: For the State