



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL CASE NO. 20 OF 2012

REPUBLIC.....PROSECUTION

VERSUS

EPHANTUS MUGENDI MURIUKI.....1ST ACCUSED

ISAACK KARIUKI NJERU.....2ND ACCUSED

SAMUEL NJUE NJIRU.....3RD ACCUSED

RULING

This is a ruling on an application by counsel representing the accused persons for discharge of a bail condition requiring the accused person to report to OCS Runyenjes police station on alternative Fridays upon being released on bond.

The accused persons face a charge of murder contrary to Section 203 as read with 204 of the Penal Code. They were arraigned in court on 25/5/2012 and plea was taken on 29/5/2012. The accused persons were released on bond by Ong'udi J., in her ruling dated 18/10/2012 where the following terms and conditions were given:-

1. *They will each be released on a bond of Shs.500,000/= with a surety each.*
2. *They will be reporting to the OCS Runyenjes Police Station on alternative Fridays once released until further orders of this Court.*
3. *The Deputy Registrar to approve the sureties and give mention dates.*

Mr. Kathungu for the accused persons made this application for discharging of condition No. 2 orally in court. He argued that the order was issued due to the tension that existed after the offence was committed. He submitted that circumstances have now changed and that the order should be discharged. Its existence is interfering with the accused persons means of earning a living since they do casual jobs.

The prosecution through Ms. Matere opposed the application on grounds that the order was issued due to a threat by accused persons to interfere with witnesses. That threat still exists in that in November 2014 one key witness namely Nancy Wanja Njeri reported to OCS Runyenjes that she had been threatened and intimidated by the accused persons. The report was booked at Runyenjes police station which led to the OCS giving a warning to the accused persons. The prosecution said it had received the report from the OCS and proceeded to produce a letter the State Law office had written to the OCS. Ms. Matere told the court that the prosecution was planning to apply for cancellation of bond.

On the letter to the OCS by the prosecution, Mr. Kathungu said that it was clear from its contents it is the

prosecution's office who are opposing the discharge of the order but not the OCS. In their letter the prosecution explains the reason why the order was issued adding that there should be no variation. The letter ends with instructions to the OCS to swear an affidavit to confirm the threats.

I have considered the arguments of both sides on this application. I have also perused the record including the affidavit of Cpl. George Wang'ombe the investigating officer sworn on an undated but filed on 27th day of September 2012 which was presented in opposition of the application for bond dated 16th August 2012. He states in paragraph 4

“that if the accused persons are released on bond, there is a likelihood of them interfering with prosecution witnesses most of whom neighbours the accused persons”.

He continues to state in paragraph 5 that the incident of the murder is still fresh in the minds of the deceased's family members and other members of the public who may lynch the accused persons if set at liberty.

The honourable Judge in her ruling said;

“I do not see any serious reason raised to make me deny the accused persons bail”.

The accused persons were then released on bond with conditions.

In view of the background it is clear that the prosecution had no evidence of any threats since they talked of “a likelihood”. The Judge considered this as a reason not sufficient to deny the accused persons bail. I agree with the defence counsel that the requirement to report to the police twice a month was made due to the fact that the incident was still fresh and in the minds of the deceased's family members and there was likelihood of hostility or violence against the accused persons. The order ended with words “until further orders of this court”. This demonstrates that the orders were not meant to be permanent. The incident occurred on 5th May 2012 and the bond was granted on 18th October 2012. Since the incident, it is about two and half years down the line. Due to the nature of the order, the defence are in order to apply for its discharge.

As for the reasons given by the prosecution in opposition of the discharge, it would have been appropriate for them to produce an extract of the OB report made by the witness at Runyenjes police station. An affidavit of the OCS Runyenjes would also have strengthened their case against this application. In the absence of these two documents, the submissions of the counsel are not backed by any evidence. The letter to the OCS does not support the allegations of interference or threats to witnesses. It is actually directing the OCS to confirm the contents of the letter (of threats to witnesses) in form of an affidavit. I therefore do not find any serious opposition to the discharge of the order given on 18/10/2012. The prosecution may use the existing law to deal with any interference or intimidation of witnesses.

I allow the application and order that the order directing the accused persons to report to OCS Runyenjes police station issued on 18th October 2012 is hereby lifted.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF FEBRUARY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Matere for State

Ms. Muriuki for Kathungu for the accused persons

F. MUCHEMI

JUDGE