



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 76 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

DANIEL MUGABE SISO.....APPLICANT

RULING

The application before me seeks a review of the court's earlier orders denying the applicant bail. In the ruling dated 29th October, 2013, the court denied the applicant bail for reason that he was likely to interfere with eye witnesses with whom he lived at the Karen Police Station police lines. The court was of the view that an expeditious trial rather than granting the applicant bail would better serve the interests of justice in the case.

In the present application filed on 10th June 2014, the applicant seeks a review of the orders on grounds that the prosecution has delayed the trial; that the applicant has not threatened the witnesses; and, that the applicant is ready to abide by any conditions set by the court. In his supporting affidavit, the applicant avers that his trial has been delayed by the prosecution on account of lack of government analyst's report and other exhibits. He also avers that he does not personally know the prosecution witnesses or where they live currently. In oral submissions before court, **Mr. Muchiri** for the applicant, submitted that the trial had not proceeded expeditiously as expected and that the witnesses who at the time lived in Karen Police Station have since relocated. He also observed that the prosecution had not filed a replying affidavit and could therefore only address the court on matters of law and not fact.

At the hearing of the application, **Ms. Ikol** for the State made oral submissions opposing the application on the grounds that the court had considered the earlier application and denied the applicant bail. She submitted that the circumstances had not changed to warrant a review of the ruling. She further submitted that the prosecution was still apprehensive that civilian witnesses were still under threat. She prayed that the witnesses be heard first before the applicant is released. In reply, **Mr. Muchiri** argued that the apprehension of the State was not founded on fact. He submitted that the circumstances had changed because the prosecution had occasioned delay in the matter.

In considering the application, I have perused both the ruling dated 29th October 2013 and the record to satisfy myself on the allegations of delay. In the ruling, the court had directed that the matter be set down for an expeditious trial. When the matter came up for hearing on 24th March 2014 the prosecution counsel sought an adjournment for lack of witnesses. The following day when she had witnesses in court, she still sought an adjournment on the ground that she had not received the government analyst's report which was a critical exhibit from the start of the trial. An adjournment was granted and the trial was scheduled for the 3rd & 4th November 2014. On that day however, the trial court was not sitting which necessitated a further rescheduling of the case.

It is apparent from the above that there has been some delay in the trial contrary to the expectation of an expeditious trial as earlier directed by the court. It is also apparent that the submission by the prosecution on the apprehension of the witnesses has not been demonstrated. Indeed the State did not find it necessary to provide affidavit evidence of the circumstances on the ground. I am therefore not persuaded that there has been no change of circumstances since 29th October 2013 when the court first considered and dismissed the accused's bail application.

In the premises, and there being no further compelling reason, I am inclined to grant the applicant bail. He is released on condition that he shall:-

- i. Pay cash bail of One Million Shillings with one surety of similar amount or in the alternative execute a personal bond of Kshs.1 million with 2 sureties of Kshs. 1 million each to be approved by the Deputy Registrar of the court.
- ii. Not leave the jurisdiction of this court without an order of the court.
- iii. Not to interfere with prosecution witnesses in any manner whatsoever.
- iv. Attend court without fail whenever required.

Orders accordingly.

Ruling delivered and dated at Nairobi this 26th day of March, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....:	Court clerk
.....:	Accused/Applicant
.....:	For State
.....:	For Accused/Applicant