

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.78 OF 2014

TITUS NGAMAU MSITA KATITU..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant **Titus Ngamau Musila** alias **Katitu** is facing trial for the alleged murder of one Kenneth Kimani Mwangi. He is alleged to have shot and killed the deceased on 14th March 2013 at Githurai 45 bus stage in Nairobi. When arraigned in court on 5th Septemebr 2014, he denied the charge and was remanded in custody pending trial. Subsequently on 11th September 2014 he applied to be released on bail. The bail application was opposed by the State through the Independent Policing Oversight Authority. I heard and disposed of the application vide a reasoned ruling delivered on 7th October, 2014. The accused now seeks a review of the said ruling hence the present application.

The review application is brought on the grounds *inter alia* that the applicant has a qualified constitutional right to bail; that he is unwell; that he has the right to be presumed innocent until the contrary it proved; that he will attend trial and that he shall not interfere with prosecution witnesses. The application is opposed by the State. In opposing, prosecution counsel relied on the affidavit sworn on 12th September, 2014.

At the hearing of the application on 28th May 2015, I heard the oral submissions of **Ms. Machuki** and **Mr. Okeyo** for the applicant and respondent respectively. In urging the application, Ms. Machuki submitted that the circumstances in the case had changed as the matter had failed to take off on the scheduled dates when the witnesses who were said to be under threat of interference by the accused would have testified. She further submitted that the witnesses were no longer at any risk of interference as they had relocated abroad. She pleaded with the court to grant the applicant bail to enable him discharge his parental duties to his four minor children.

On his Mr. Okeyo, part submitted that there were no changed circumstances to necessitate a review of the court's ruling. He submitted that the change of hearing dates was occasioned by the congested court diary and that the prosecution was ready to avail witnesses and commence the trial. He urged the court to consider its Ruling in which it had found the accused not fit to be released on bail and to find that the same circumstances still exist.

I have considered the application. I observe that the grounds upon which the application is premised are the same as those raised in the earlier application. I also observe that the opposition is premised on similar grounds and also on the additional ground that there were no changed circumstances. Consequently, I have considered this ruling dated 7th October, 2015.

The law allows an accused person to seek bail at any time of the proceedings. In this review application I have considered the court's earlier ruling. I observe that the grounds were exhaustively argued. The court considered and ruled on various issues including the accused's constitutional entitlement to bail and the right to presumption of innocence. I see no need to restate the arguments and findings on all the grounds in this review application. However, on the issue of possible interference with witnesses, the court made a finding that the applicant was likely to interfere with witnesses. The court was persuaded on the basis of the material laid before it that the applicant had actively interfered with and

threatened witnesses. It held, in a detailed and reasoned ruling, that the demonstrated interference with witnesses was a compelling reason to deny the applicant bail. In the present application, it has not been demonstrated that there were changed circumstances.

In the premises, I find in the present application that there are no new circumstances to warrant a review of the Ruling dated 7th October, 2015. The review application is thus dismissed.

Ruling delivered and signed at Nairobi this **29th** day of **June**, 2015.

R.LAGAT-KORIR

JUDGE

In the presence of:

..... :Applicant

..... :Court clerk

..... :For the Applicant

..... :For State