



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 115 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ERASTUS NGURA ODHIAMBO alias BABA BILLY.....ACCUSED**

**RULING**

In the course of hearing this matter, counsel for the accused person Mr. Onyango asked the court to review the application for bond in respect of the accused person. He submitted that the court had ordered in its ruling delivered on 1<sup>st</sup> October 2015 that the application for bond would be reviewed after the testimony of the prosecution key witnesses. He also asked the court to order the prosecution counsel to supply the defence with all the documents the prosecution is relying on, in the format in which these documents appear in the bundle held by the prosecution, to enable the defence to prepare for the case. Mr. Onyango told the court that the prosecution witness (referring to PW1) denied the format of her statements giving the impression that there are two different versions of that statement.

Prosecution counsel, Ms Mwaniki, in her reply told the court that all the typed statements are the same in the bundles held by each part; that all the witnesses have signed on each page of their handwritten statements but not on the typewritten statement; that the defence counsel did not ask for the handwritten statement for purposes of cross examining the witness. Counsel told the court that the prosecution has not denied the defence any document and are willing to share the handwritten statements with the defence.

On the issue regarding the review of the application for bail, prosecution counsel told the court that she seeks to have Justice Kimaru's ruling interpreted to the parties or in the alternative this court should allow the prosecution to respond to the application for review. She said that the prosecution may file further charges against the accused person.

Mr. Onyango responded that the ruling of this court on the issue of bail is the relevant one and that there is no need to send the file back to Justice Kimaru for interpretation of his ruling.

I have considered rival submissions by both counsels. On the issue of the witness statements, I have considered that the prosecution is willing to share all the information (statements) in their custody with the defence. In my view therefore, this matter is settled and any issues in respect of the same matter arising in the course of this trial shall be handled as they arise and/or on a day to day basis.

In respect of the bail application, I direct that the parties are at liberty to address this court on the issue of review of bail application without necessarily filing fresh documents since the issues are clear from the bail applications so far canvassed in court. I am hopeful that the parties appreciated the ruling of this court on this issue which ruling in my view is the one the defence is seeking to have reviewed. I make orders accordingly.

**Dated, signed and delivered in open court this 22<sup>nd</sup> October 2015.**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Mwaniki, prosecution counsel

Mr. Onyango, defence counsel

Mr. Erastus Ngura Odhiambo, accused

Mr. Daniel Ngumbi, court clerk