



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO.73 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN KILONZO KULUNZU.....1<sup>ST</sup> ACCUSED**

**ANN MUENI MUTEMI.....2<sup>ND</sup> ACCUSED**

**GEOFFREY MUTUKU MBUTA.....3<sup>RD</sup> ACCUSED**

**RULING**

1. **ANNE MUENI MUTEMI** and **GEOFFREY MUTUKU MBUTA**, the 2<sup>nd</sup> and 3<sup>rd</sup> **Accused Persons** sought to be released on bail pending trial. The application was vehemently opposed by the state. In the ruling dated **17<sup>th</sup> March, 2015** this court declined to grant the order sought but undertook to re-consider the application after hearing some of the prosecution witnesses. The state however failed to avail witnesses as directed which prompted the defence to make the instant application.
2. It is therefore, their prayer that the Court do review and/or reconsider its ruling dated 17<sup>th</sup> March, 2015. The application is premised on grounds that there has been a discovery of new evidence which was not tendered during the hearing of the application for bail in that the accused persons are not related in any way to the witnesses; Reasons adduced in objection to release the accused persons on bond during hearing of the application for bail pending hearing did not meet the threshold for compelling reasons as required by the Constitution and the Criminal Procedure Code and it is in the interest of justice and fairness for the accused persons to be released on bail pending hearing and determination of the matter.
3. On the **23<sup>rd</sup> June, 2015**, the 1<sup>st</sup> accused also applied to be released on bail. He based his argument upon the same reasons as his co-accuseds. He deponed an affidavit stating that he is not related to witnesses who will testify and the suspects at large having not been named there is nothing to suggest that he had no intention of interfering with the witnesses.
4. In a response thereto the state through **No.74560 P.C Morris Muli**, the Investigations Officer stated that the court having pronounced itself through its ruling, for the sake of the safety of witnesses, it was imperative to have evidence of witnesses taken prior to re-consideration of the bail application.
5. As clearly stated, this court addressed the issue of the accused persons being released on bail pending trial. In reaching its decision this court took into consideration the reasonable apprehension demonstrated by the prosecution of the safety of the witnesses. This court found that interest of justice called upon it to hear some of the key witnesses prior to re-considering the application. The prosecution failed to present its witnesses in court because a report had not been received from the Government Chemist. The reason given having been worthy of acceptance this court has absolutely no reason to renege on the order dated 17<sup>th</sup> March, 2015.
6. In the result, the application fails. Accordingly, it is dismissed.

7. It is so ordered.

**DATED and SIGNED at KITUI**

**L.N. MUTENDE**

**JUDGE**

**DELIVERED at MACHAKOS this 21<sup>st</sup> day of October, 2015**

**P. NYAMWEYA**

**JUDGE**