



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 8 OF 2014

REPUBLIC.....RESPONDENT

VERSUS

1. PAUL WAINAINA BOIYO ALIAS SHEKI.....1ST APPLICANT

2. CHRISTOPHER LUMBAZIO ANDIKA alias LUMBA...2ND APPLICANT

3. ANDREW KARANJA WAINAINA..... 3RD APPLICANT

4. SAMUEL KURIA NGUGI Alias VISI.....4TH APPLICANT

5. ESTHER NDINDA MULINGE.....5TH APPLICANT

6. RUTH WATAHI IRUNGU Alias ATLANTA.....6TH APPLICANT

R U L I N G

The applications before me have been filed by the 1st, 2nd and 6th accused persons in Criminal Case No. 8 of 2014 (hereinafter 1st, 2nd and 6th applicants respectively). They seek a review of my ruling delivered on 20th March 2014. In that ruling, the applicants were denied bail for the reason that they were likely to interfere with key prosecution witnesses.

In the present review application, the 1st applicant Paul Wainaina Boiyo alias Sheki, states that he has an unqualified right to be released on bail on reasonable conditions under **Article 49(i)h of the Constitution**; that he is seriously unwell and his health continues to deteriorate in incarceration; that he requires urgent specialized medical treatment outside the prison in a well-equipped hospital; that he has a right to be presumed innocent till proven guilty and that he will not interfere with witnesses and shall attend court for his trial.

The 2nd applicant Christopher Lumbazio Andika states in his application dated 13th May 2014 that he has an unqualified right to be presumed innocent; that his continued detention undermines, devalues and contravenes his constitutional rights; that he is not a flight risk; that he will attend court whenever required. Further, the 2nd applicant faults the ruling of the court which found that he was likely to interfere with prosecution witnesses. He avers in his supporting affidavit that he will not get in touch with any witnesses pending the hearing and conclusion of the trial.

The 6th applicant Ruth Watahi Irungu alias Atlanta states that she does not know the prosecution witnesses in the case and has no intention to interfere with them; that the prosecution's fear of such

interference is unfounded and that she is willing to attend her trial if granted bail.

All three applications are opposed by the State through two replying affidavits sworn by **No. 62769 Corporal Maxwell Otieno** who is one of the investigating officers. With respect to the 2nd applicant's application he reiterates the averments in an earlier affidavit sworn by **Seargent Martin Nyuguto** sworn on 20th January 2014 to the effect that the applicant is well known to the prosecution witnesses and is likely to intimidate the said witnesses. He further avers that there are no changed circumstances to warrant the court to review its earlier ruling.

With respect to the 1st and 6th applicants, **Cpl Maxwell Otieno** has stated in his Replying Affidavit filed on 19th May 2014 that there were no new circumstances to warrant a review of the court's earlier orders. With regard to the 1st applicant, he avers that the applicant can access medical treatment at the Kenyatta National Hospital. With respect to the 3rd applicant/6th accused **Cpl. Otieno** states at paragraph 14 of his Replying Affidavit that she was well known to the prosecution witnesses. To support this averment, he has annexed the applicant's statement wherein she names the people whom she interacted with at the club on the material date and who are among the prosecution witnesses.

At the hearing of the review application on 20th May 2014, **Mr. Ombetta** for the 1st applicant argued that the replying affidavit opposing the 1st applicant's application does not disclose any compelling reasons. He urged the court to release his client on medical grounds for him to access urgent medical treatment which was not available to him in custody. **Mr. Solonka** for the 2nd applicant urged the court to find that the 2nd applicant was not a regular patron of Porkies Club (scene of crime) and therefore was not close to the staff of the club so as to be in a position to influence or interfere with the witnesses.

In opposing the applications for review **Ms Mwaniki** for the respondent argued that there was no new material evidence to cause the court to review its earlier finding. In response to the 1st applicant's application, she stated that the medical report relied on does not indicate that the accused has been denied medical treatment while in custody. For the 2nd and 6th applicants, she urged the court to find that there exist a nexus between the applicants and the potential witnesses and that the fear of possible influence and interference is real.

I have considered the review applications. In the ruling dated 20th of March 2014, the court denied applicants bail having considered in depth the law, the reasons for opposition by the State and the circumstances of the case. The considered ruling explained in depth the reasons for denial of bail. It has not been demonstrated to me in the review applications that there were any changed circumstances to warrant a review of the court's finding on this issue in respect of all the applicants.

With respect to the new ground raised by the 1st applicant concerning the deterioration of his health while in custody, the medical report presented in support recommends further medical investigation of the applicant's condition. It has not been demonstrated that the applicant has been denied such investigation.

In the premises and for the foregoing reasons, I find that there are no new circumstances to warrant a review of the orders. The applicants may renew their applications after the key prosecution witnesses have testified. The applications are dismissed.

Ruling delivered, dated and signed at Nairobi this 26th day of June, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

-: 1st Applicant
-: 2nd Applicant
-: 6th Applicant
-: For the 1st accused/applicant
-: For the 2nd accused/applicant
-: For the 6th accused/applicant
-: For the State/respondent