



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.50 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

DANCUN LIVINGSTONE KIMANTHI.....1ST APPLICANT

WINNIE WAIRIMU KARIUKI.....2ND APPLICANT

RULING

The application before me seeks a review of the court's earlier ruling denying the applicants bail. Three previous applications filed by the applicants were rejected for two reasons. In the first ruling delivered on 27th November, 2013, the court (differently constituted) found that the release of the applicants was likely to cause fear to the witnesses who were the 1st accused's fellow students at United States International University (U.S.I.U).

In the subsequent applications argued before me, the court found vide a ruling delivered on 22nd August 2013 that the applicants were likely to interfere with prosecution witnesses who were deemed to be in a vulnerable position being former colleagues of the 1st applicant. It also found that the applicants were likely to abscond trial given that they faced two capital charges.

The applicants filed yet another application which was dismissed in a ruling dated 11th March 2014 for reason that there were no changed circumstances to warrant a review of the court's earlier ruling. In denying bail however the court directed that the applicants could renew their application once the identified vulnerable witnesses had testified.

In the present application, both accused have through their counsel argued that the vulnerable witnesses have since testified. They further submit that the capital robbery charge faced by the accused arose out of the same incident giving rise to the present murder trial before this court. The State has opposed the application on the ground that the likelihood of the accused absconding trial was high given the likelihood of conviction in the two capital offences.

I have considered the application. I am satisfied that there is no compelling reason to warrant denial of bail at this stage. As the record shows, the key prosecution witnesses who were earlier deemed to be vulnerable have since testified. Further, and from their testimony they are no longer students of U.S.I.U. where the 1st applicant may or may not resume studies if released. Secondly, it has been demonstrated to me that the accused are not necessarily serial offenders as the capital robbery charge in the lower court arose out of the same incident as the murder case before this court.

In the premises I allow the respective applications on the condition that each applicant shall:-

- i. Pay cash bail of One Million Shillings (Kshs.1Million) with one surety of similar amount or in the alternative execute a personal bond of KShs.1Million with 2 sureties of similar amount.
- ii. Shall deposit his/her passport with the court and not leave the jurisdiction of this court without an order of the court.
- iii. Not communicate with or in any manner whatsoever interfere with any of the prosecution witnesses.
- iv. Attend monthly mention before the Deputy Registrar of the court.

The first such mention shall be given during the next hearing date which will be on 19th/20th November, 2014

Ruling delivered, dated and signed at Nairobi this **29th** day of **October, 2014**

R. LAGAT - KORIR

JUDGE

In the presence of:

-: Court clerk
-: 1st Applicant
-: 2nd Applicant
-: For the 1st Applicant
-: For the 2nd Applicant
-: For the State/respondent