



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 94 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

JOSEPH MARANGU M'MURIITHI alias KIHARA alias JAMES

MWANGI NDIRANGU.....1<sup>ST</sup> APPICANT

GERALD WAHOME MAINGI .....2<sup>ND</sup> APPLICANT

RULING

**Joseph Marangu M'Muriithi** alias **Kihara** alias **James Mwangi Ndirangu** and **Gerald Wahome Maingi** are the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively in Nairobi Criminal Case No. 94/2012. They are charged with the murder of **Omit Shah**. The offence was allegedly committed on 13<sup>th</sup> September 2012 at 5<sup>th</sup> Parklands Avenue in Parklands within Nairobi County. Both accused were arraigned in court on 22<sup>nd</sup> November 2012. They pleaded not guilty and were remanded in custody pending trial. Their respective applications to be released on bail were dismissed by the court in a ruling dated 30<sup>th</sup> September, 2013.

The two accused now seek a review of the court's ruling. In their respective applications dated 20<sup>th</sup> January 2014 they state that a year has lapsed since the court delivered its earlier ruling denying them bail. In their respective supporting affidavits they state that the prosecution had not demonstrated that they were likely to interfere with prosecution witnesses if released. In urging the application, **Mr. Mathenge** for both accused submitted that the issue of interference with witnesses had not been proved by the prosecution and was only imaginary.

**Ms. Onunga** for the State while opposing the application relied on the averments of **Corporal Gerald Kamwaro** sworn on 1<sup>st</sup> July, 2013. She submitted that the circumstances had not changed as the firearms allegedly used by the applicants had not been recovered and neither had the accused's accomplices been arrested. Further she submitted that the applicants were still likely to interfere with prosecution witnesses.

I have considered the rival affidavits and submissions in this application. I have also considered in depth the ruling dated 30<sup>th</sup> September 2013. In that ruling the court was persuaded that the prosecution had demonstrated the existence of compelling reasons not to admit the applicants to bail. The court was of the view that it was in the interest of justice to allow the investigation time to track down and arrest the suspected accomplices in this case and to recover the arms and ammunition suspected to have been used by the accused and their accomplices. The court was also persuaded that the eye witnesses in the matter

were likely to be intimidated if the accused were released on bail.

In opposing the application prosecution counsel emphasized that those circumstances had not changed. It is the court's view, however that the investigation has had two years (since the accused were first arrested and arraigned in court) to have completed the investigations, arrested any accomplices and recover the firearms and ammunition said to have been used to commit the offence. Failure by the investigation to act expeditiously cannot be visited on the accused. On the issue of the likely interference with witnesses I find that the same has not been demonstrated.

In the premises, I find that at the present there are no compelling reasons not to admit the applicants to bail. I allow their respective applications on condition that each applicant:-

- i. Shall pay cash bail of One Million Kenya Shillings (Kshs.1Million) with two sureties of similar amount.
- ii. Shall 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 of the case before the Deputy Registrar of the court. The first such mention shall be on 22<sup>nd</sup> January, 2014.

Orders accordingly.

**Ruling delivered, dated and signed at Nairobi this 27th day of November, 2014**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....:	Court clerk
.....:	1 <sup>st</sup> Applicant
.....:	2 <sup>nd</sup> Applicant
.....:	For the 1 <sup>st</sup> accused/applicant
.....:	For the 2 <sup>nd</sup> accused/applicant
.....:	For the State/respondent