

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 13 OF 2014

SGT. JOHN NDUNGU KIRERI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application before me seeks a review of the court's ruling dated 24th March 2014. In that ruling the court disallowed bail having considered the circumstances of the case and formed the opinion that the accused was likely to interfere with key prosecution witnesses.

The present application is brought on the grounds that the applicant was entitled to bail under the Constitution, that he will attend his trial and that he was a student at Egerton University due for graduation and that his health had been affected by the conditions in prison. The applicant has sworn a lengthy supporting affidavit setting out in detail the events of the day leading to the deceased's demise. He avers *inter alia* that he was completely innocent and that none of the prosecution witness statements and all other documentary material point to his culpability.

In prosecuting the application, **Mr. Kaka** for the applicant reiterated the averments in the supporting affidavit. He submitted that the accused and his friends had had an evening of fun which unfortunately ended tragically and that none of the witness statements were incriminating the accused in any way. He referred the court to the statements of one Priscilla Mwangi and one Jackson Nderitu both friends of the deceased and students at Kenyatta University stating that none of them point to the culpability of the accused. He further underscored that the accused was unwell and needed medical attention.

The State has opposed the application through the Replying Affidavit of **Cpl. Moses Mwangi** who is one of the investigating officers dated 17th July 2014 and the submissions tendered before court by **Ms. Macharia**, the prosecution counsel. In opposing the application **Ms. Macharia** submitted that the only new ground was the health of the accused. She however observed that he was already receiving treatment at the Kenyatta National Hospital. Counsel further reiterated that the applicant may interfere with witnesses as earlier found by the court. She submitted that no new evidence had been adduced to warrant a review of the court's finding.

I have considered the application. In so doing, I have considered the ruling dated 24th March 2014. In that ruling, the court considered in depth the reasons advanced by the State in objecting to bail. After considering the unique circumstances of the case, the court arrived at the finding that the applicant was likely to interfere with key prosecution witnesses. I find that the present application raises no new circumstances to warrant a review of the court's earlier finding.

On the medical issue which has been raised for the first time, I observe from the exhibit displayed by the applicant that he is already undergoing treatment at the Kenyatta National Hospital as indicated by Dr. Ndeti. With respect to graduation ceremony which the applicant wished to attend, I observe that the same has been overtaken by events.

In the premises, I find the application not merited.

It is thus dismissed.

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

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk
.....: Applicant
.....: For the accused/applicant
.....: For the state/respondent