

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 92 OF 2013

SIMON MANGO OTIENOAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application before me seeks a review of the court's decision to deny the applicant bail. In the ruling dated 7th March, 2014, the court denied the applicant bail for reason that the applicant was likely to abscond and not attend trial. The court arrived at the decision after a careful consideration of the material laid before it by the applicant.

The present application is brought on the grounds that the court relied on the affidavit evidence of the Investigating Officer who had deponed that the applicant was seen assaulting the deceased; that the accused is innocent until proven guilty and that there has been no allegation of adverse conduct on the part of the accused.

In prosecuting the application **Mr. Kihanga** for the applicant submitted that the previous application had been denied because the court was of the opinion that the applicant would interfere with witnesses. He stated that the defence had not even received witness statements and therefore the applicant did not know them and would not be in a position to interfere with them. He further submitted that the applicant was not a flight risk and would attend court dutifully.

In opposing the application, **Mr. Okeyo** for the respondent submitted that there were no new circumstances to warrant a review of the court's earlier orders. He further argued that there was a possibility that the applicant was interfering with witnesses.

I have considered the review application. Both the averments in the supporting affidavit of the applicant and the submissions of the prosecution and the defence counsel on the issue of interference with witnesses are not entirely accurate. In the court's ruling dated 7th March 2014, the court declined to grant bail not on the ground of interference with witnesses but on the basis the applicant was likely to abscond trial. The court was so persuaded having carefully considered the circumstances of the case. The said circumstances have so far not changed to warrant a review of the earlier orders. **Article 49(i)h of the Constitution** which gives an accused person the right to bail gives the court discretion to grant or deny bail depending on the circumstances of each case. In this particular case, I find that the interests of justice shall be served in disallowing rather than allowing the application.

The review application dated 27th May 2014 is thus rejected.

Ruling delivered, dated and signed at Nairobi this 20th day of November, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For accused/applicant

.....: For the State/respondent