



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 44 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

FRANCIS NGARI GITAU.....APPLICANT

RULING

I have considered the application dated 26th July 2013. The applicant seeks a review of the Ruling/orders of this court (differently constituted) dated 13th November 2012 in which the applicant was denied bail.

It is the applicant's case as far as I can glean from the supporting affidavit sworn by his counsel **Joseph Njoroge Mbugua** and submissions tendered at the hearing by **Ms. Mutuku** that he was denied bail unfairly and that in denying him bail the court did not give any reasons. Further the applicant seeks a review on the ground that he suffers asthma which medical condition is exacerbated by the dusty and cold environment at the prison.

The State has not opposed the application preferring to leave the matter to the court.

In considering this review application I have carefully perused the record and the Ruling delivered on 13th November 2012. I note that the applicant took plea on 20th June 2012 and was remanded in custody. He then filed an application to be released on bail. The application was heard by **Ombija J** on 11th October 2012 when he indicated that the ruling would be delivered on 13th November 2012. According to the record, **Ombija J.** delivered the Ruling on 13th November 2012 in open court in the presence of the accused; his counsel (**Ms Mutuku**) and the State Counsel (**Mr. Okeyo**). The Ruling dated 13th November 2012 is on record. My perusal of the same shows that **Ombija J** set out the reasons for dismissing the application. In sum he found that the applicant was a flight risk having gone underground for one year and seven months after the commission of the offence and that he was only arrested after being involved in an accident. At page 7 of the Ruling the court stated; "Against that backdrop of the (vehicle - sic!) evidence tendered by the prosecution, it is abundantly clear to me that the likelihood of the applicant/accused absconding is more than likely" The court concluded by stating at page 8 thus:-

"In this particular case having carefully weighed the rivalling evidence embodied in the affidavits in support of the application and in opposition thereto, the evidence in opposition to the application vide the affidavit of the investigating officer (is more?) weighty than the evidence in support of the application."

From the above it is clear that, contrary to the grounds set out on the face of the application and averments contained in the sworn affidavit of **Joseph Njoroge Mbugua**, the applicant's counsel dated

26th July 2016, and submissions tendered before this court by **Ms Mutuku** on 1st October 2013, the court provided reasons for dismissing the application. It has not been shown to me in this review application that there has been a change of the facts and circumstances, obtaining then and contained in the Ruling that would necessitate my review of the orders dated 13th November, 2012.

I find the review application dated 26th July 2013 without merit. It is dismissed.

Ruling delivered, dated and signed at Nairobi this 29th day of October, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the applicant

.....: For the State/respondent