



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Application 49 of 2009

REPUBLIC.....PROSECUTION

VERSUS

SAMMY KIPROTICH KIRWA.....1ST ACCUSED

ALFRED KIPTOGOM MITEI.....2ND ACCUSED

ALEXANDER KIPROTICH NGETICH.....3RD ACCUSED

RULING:

The Prosecuting Counsel for the State sought to make an oral application for cancellation of the Bail/Bond terms of the 3rd Accused, **ALEXANDER KIPROTICH NGETICH**.

Counsel for the State relied on an Affidavit deponed by one **HILLARY KIPKEMEI** and was sworn on the 22nd June, 2011.

The deponent avers that on the 10th June, 2011 a person by the name **ALFRED KIPTOGEN MITEY** threatened to kill him. The deponent avers that the said person who had threatened him with death and dire consequences was the 3rd Accused, herein.

For the reasons stated above Counsel for the State prayed for the cancellation of the 3rd Accused bail terms as he was found to be interfering and intimidating witnesses which act was in total breach of the terms for bail.

The Application was opposed and the 3rd Accused relied on his Replying Affidavit made on the 26th September, 2012.

Counsel for the 3rd Accused submitted that the 3rd Accused's full names are **ALEXANDER KIPROTICH NGETICH** and that the names and allegations made in the affidavit dated the 22nd June, 2011 alluded to other persons and not the 3rd Accused.

That the case, namely **CRIMINAL CASE NO. 33 OF 2011** alluded to in the aforementioned affidavit had no bearing on the 3rd Accused, nor did it involve him and the said Accused had no knowledge of such a case.

Counsel submitted that the alleged actions occurred on the 10th June, 2011 and ought to have been brought to the courts attention on the first instance and at the commencement of the hearing of the case on the 19th November, 2011.

For the reasons stated above Counsel for the 3rd Accused urged the court to expunge the allegations and references from the court record as they did not relate to or concern the 3rd Accused.

The court has heard the submissions and arguments of both Counsel for the State and Counsel for the 3rd Accused and has also had occasion to peruse the court record.

The court concurs with the submissions of Counsel for the 3rd Accused, and finds that the person referred to and the allegations alluded to in the affidavit made on the 22nd June, 2011 relate to a person other than the 3rd Accused, herein.

The court also finds that there is no evidence submitted by the state showing that the Cr. Case No. 33 of 2011 has any bearing or concerns the 3rd Accused, herein. The court also notes that the names of the concerned parties are not provided in the said Affidavit.

The court notes that the alleged incident occurred on the 10th June, 2011 and that the 3rd Accused was admitted to bail on the 28th May, 2012 and that the court that granted the 3rd Accused found no compelling reasons to deny him his Constitutional rights to Bail.

For the reasons stated above, this court finds no reason to interfere or cancel the 3rd Accused's terms of Bail.

The court finds that the Application lacks merit and the same is hereby dismissed.

It is so ordered.

Dated and delivered at Eldoret this 25th day of October 2012

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J
CC: Andrew
Counsel for the 3rd Accused: Miyienda
Counsel for the State: Kabaka
Accused: Present.
Language: Kiswahili.

**A.MSHILA
JUDGE**