



**Mwaura v Republic (Criminal Case 18 of 2019)
[2023] KEHC 1760 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 18 OF 2019**

**M MUYA, J
MARCH 9, 2023**

BETWEEN

MUGURE PETER MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant in a Notice Motion application dated December 13, 2019 but filed in Court on December 16, 2019 sought to be released on bond/bail.
In his ruling delivered on February 21, 2020 Justice Ngaah refused to grant the accused bond after considering his conduct and interference with witnesses.
2. On December 15, 2020 the accused made another application which was three pronged. He was seeking the review of the bail ruling, self-representation and restitution of his motor vehicle Registration Number, KCP 740, his personal effects, release of a military file and supply of witness statements.
3. On the 10th day of June 2021 Lady Justice Muchemi declined to grant the orders sought principally on the grounds that the vehicle in question was an exhibit which had yet to be produced in court. The application to review the issue of bond was also declined. The prosecution was ordered to furnish the accused with witness statements and exhibit. The application for self-representation was declined.
4. On December 6, 2021 the accused made another application for bond, which application was declined by Justice Njagi on 6th day of May 2022.
5. Now before me is a notice of Motion application dated 18th January, 2023 seeking an order for release of motor vehicle registration number KCP 740 Subaru Imprezza belonging to the applicant and the



- release of personal effects confiscated from the appellant which have already been produced as exhibits or which do not form part of evidence.
6. The other is an oral application for bond. The applicant's contention is that nine witnesses have already testified and the allegations of witness interference is not based on proper grounds.
 7. It is further contended that the applicant is not in a position to interfere with witnesses and never had he interfered with them.
 8. The application is opposed. The grounds are that there are 4 Junior Officers who are yet to testify. That the offence is a grave one and the applicant will be tempted to jump bail. Further that the matter is coming up for hearing on the March 14, 2023 for three consecutive days and there is no likelihood for the accused staying in custody for a long period. As for the 2nd application seeking the release of his motor vehicle
 9. It is contended that it has not yet been produced in court. As for his documents it is stated that they are relevant in this case.

Analytic and Conclusion

10. In the case of *Republic Versus Diana Suleiman Said and another* (2014) e KLR .It was held;

“The changed circumstances test is one of common sense, that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of Justice, not only for the accused but also for the complainant and the Society at large. In the same way, that an unsuccessful application for bail may repeat his application if the

Circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accused.”
11. I have noted and observed that the applicant has made three other applications before different judges who have declined to grant him bond. It is appreciated that before the other Judges this hearing had not commenced.
12. This court has already heard 9 witnesses, so the circumstances have changed albeit minimally. This court has endeavored to have the matter heard and determined expeditiously, and to that end it has fixed the case for hearing on 14th, 15th and 16th day of March, 2023 which is next week. This is to eliminate the grounds of interference with witnesses
13. It is noted that the police have detained the applicant's vehicle as an exhibit and his personal effects. It is ordered that photographs of the vehicle be taken in the event that this has not been done and the vehicle be produced in the hearing dates fixed for next week so as to allow the vehicle to be released back to the accused noting that the vagaries of nature and weather must have taken their toll.

The personal documents belonging to the accused and which are not relevant to this case ought and should be released to him. Those that are relevant to this case to be produced next hearing dates to enable their release to him.
14. Lastly, though the circumstances have slightly changed by dint of the fact that some witnesses have testified, there are still many more remaining and notably about four are said to be juniors of the accused. I decline to grant him bond at this stage.



RULING DELIVERED DATED AND SIGNED IN OPEN COURT AT NYERI THIS 9TH DAY OF MARCH, 2023.

HON. JUSTICE M. MUYA

JUDGE

In the presence of counsels:

Mr.Gori.....Applicant

Mr. Mwangi.....Respondent

