



REPUBLIC OF KENYA



**Republic v Isabwa & 6 others (Criminal Case 29 of 2015) [2023] KEHC 2375 (KLR)
(Anti-Corruption and Economic Crimes) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CRIMINAL CASE 29 OF 2015
JM BWONWONG'A, J
MARCH 8, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ERIC MUNYERA ISABWA 1ST ACCUSED

RAPHAEL KIMANI GACHII 2ND ACCUSED

MUSTAFA KIMANI ANYONI 3RD ACCUSED

STEPHEN ASTIVA LIPOPO 4TH ACCUSED

JANE WANJIRU KAMAU 5TH ACCUSED

MARGARET NJERI WACHURI 6TH ACCUSED

SIMON WAMBUGU GICHAMBA 7TH ACCUSED

RULING

1. Counsel for the accused have applied for review of my order in respect of the terms of their release on bail/bond.
2. The accused are charged with four counts of murder in this trial.
3. On December 21, 2022, I released the accused on bail/bond on the following terms:

“I hereby proceed to grant bail/bond to the accused. Each accused is hereby granted a bond of shillings seven hundred thousand (Kshs 700,000/=) with two sureties, each of a similar amount to be approved by the Deputy Registrar of this court.



In the alternative, each accused may be released on a cash bail of five hundred thousand shillings (Kshs 500,000/=).

Additionally, each accused is to report once in every calendar month to the DCIO, Central Division in Nairobi until the case is heard and determined.”

4. Mr Mabachi for the 6th accused and on behalf of Mr Wachira for the 1st accused submitted that the accused may only be able to raise a sum of Kshs 50,000/- as cash bail.
5. Mr Ongaro for the 3rd accused and on behalf of the Mr Olando for the 2nd accused and Mr. Mutitu for the 4th accused submitted that there is a change in the circumstances of the case to warrant review of my order dated December 21, 2022. According to him the change consisted of the failure of the trial of the case to proceed for hearing in the months of January and February 2023, which was not due to the fault of the accused.
6. Ms Nyamongo counsel for the 5th and 7th accused associated herself with the submissions of her colleagues.
7. Mr Mulama for the Republic opposed the application for review on the basis that the accused have not demonstrated any change in the circumstances of the case. He also submitted there was a change in that a number of prosecution witnesses have testified. These witnesses included Quinto Odeke (Pw 34), IP Maleya (Pw 33) and Dr Johansen Odour (Pw 35). It is only Francis Singila (Pw 16), who did not testify due to the non-disclosure of the material to be relied upon by the defence.
8. I have considered the submissions of the defence and prosecution counsel.
9. As a result, I find that the following is the issue for determination.

Whether the accused have demonstrated a change of circumstances.

10. The burden of demonstrating that there has been a change of circumstances to warrant a review of my order releasing the accused on bail/bond lies upon the accused.
11. Furthermore, that on certain dates in January and February 2023 the trial did not proceed as scheduled does not amount to a change of circumstances to warrant review of my earlier order. It is on record that Quinto Odeke was unable to proceed with his testimony because he fell ill. IP Maleya suffered the same fate. Dr Johansen Odour was stood down due to a social commitment and thereafter he also fell ill.
12. These witnesses were unable to complete testifying in court due to forces beyond the control of the prosecution and the defence. The prosecution cannot therefore be blamed for the failure of those witnesses to testify.
13. It therefore follows that the foregoing factor alone does not constitute a change of a circumstances that warrants review of this court’s order that granted bail/bond to the accused.
14. Furthermore, Mr Mabachi submitted that since the accused have not been able to comply with their terms of bail/bond, they should be released release on a cash bail of Kshs 50,000/-
15. I find that the inability of the accused to comply with the terms of their release is not in itself a change of circumstance in the case.
16. In the circumstances, I find that their application fails and is hereby dismissed for lacking in merit.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI ON THIS 8TH DAY OF MARCH 2023.



J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Ms. Maina for the State

Mr. Ongaro holding brief for Mr. Wachira for the 1st accused

Mr. Ongaro holding brief for Mr. Olando for the 2nd accused

Mr. Ongaro for the 3rd accused

Mr. Ongaro holding brief for Mr. Mutitu for the 4th accused

Ms Nyamongo for the 5th and 7th accused

Mr. Mabachi for the 6th accused

