



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 12 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

1. RAFAEL WAFULA SIMIYU

2. PETER OMOSE OMUNYINE.....RESPONDENTS

RULING

1. **RAPHAEL WAFULA SIMIYU**, the 1st accused is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. He pleaded not guilty.

2. On 9th April, 2020 the 1st accused was ordered to be released from custody on his own bond of two million shillings with one surety of similar amount. 1st accused has approached this Court with a Notice of Motion application dated 27th April, 2021 seeking revision and variation of the bond terms.

3. The application is supported by the affidavit of **FRANCIS KARANJA NG'ANG'A** learned counsel for the 1st accused. The 1st accused together with his co-accused pleaded not guilty on 9th April, 2020. Since that date, the 1st accused has been held in custody.

4. There is no doubt that 1st accused faces a serious charge on whose conviction would attract serious punishment. The court is required to take into account the charge an accused is facing in setting the bail/bond terms. This was so stated in the case **REPUBLIC VS. ROBERT ZIPPOR NZILU (2018) eKLR** thus:-

“Gravity of the offence as a consideration was appreciated by Mbogholi Msagha, J in Criminal Application No. 319 of 2002 PRISCILLA JEMUTAI KOLONGE VS. REPUBLIC (unreported) at page 3, wherein he held as follows:-

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.’”

5. The main function in granting bail/bond is to ensure an accused person does attend trial. The 1st accused seeks revision of bond terms, hereof. He seeks revision on the ground that he's unable to meet the terms set. In the case **RAMADHAN IDDI RAMADHAN & 5 OTHERS VS. REPUBLIC (2019) eKLR** the court had this to say on the amount of bail/bond ordered:-

“The Supreme Court of the United States of America in the case of STACK V BOYLE U.S. 1.3.1951

‘the court provided guidelines in assessing “whether bail is excessive starting from the premise that the traditional right to Freedom before conviction permits the unhampered preparations of a defence and serves to prevent the infliction of punishment prior to conviction. The court defined excessive as: Bail set at a figure higher than an amount reasonably calculated to assure the presence of the accused. Significantly, the court tied the question of whether a bail determination is excessive to the purpose of bail. As the court explained, the purpose of bail is to help assure the presence of the defendant at subsequent proceedings. Since the freedom of bail is limited, the filing of bail for any individual defendant must be based upon standards relevant to the

purpose of assuring the presence of that defendant.”

6. I have considered the circumstances of this case and I find there is no basis of reviewing the bond terms issued on 9th April, 2020. The terms of bond are in my view sufficient to ensure the 1st accused does attend trial. It is for that reason that the application dated 27th April, 2021 is dismissed.

RULING DATED and DELIVERED at KIAMBU this 17th day of MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant..... Ndege

1st Accused:Present

For 1st Accused:N/A

For DPP: Ms. Kathambi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE