



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO.1 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ROBERT KEVIN KARIUKI MUCHEMI ALIAS NONO.....ACCUSED**

**RULING**

1. This is a ruling on review of bond terms in respect of the 3<sup>rd</sup> accused. The defence counsel Mr. Muhoho on record for the 1<sup>st</sup> and 3<sup>rd</sup> accused made the application orally in court on 13/05/2021 when the case came for mention through video-link.

2. Mr. Muhoho said that this court presided over by Ngaah J. on 15<sup>th</sup> March 2019 granted bail to the three accused persons of Kshs.500,000/= with two sureties of alike amount. The case was later withdrawn against the 1<sup>st</sup> and 2<sup>nd</sup> accused leaving three accused persons.

3. It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> accused were able to raise two sureties as ordered by the court. As for the 3<sup>rd</sup> accused he was unable to raise two sureties but he has one who is available with a title deed who is his own mother. Mr. Muhoho asked the court to review the terms of band and allow one surety to sign for the 3<sup>rd</sup> accused person.

4. The application was opposed by the prosecution through Mr. Ondimu who argued that there are no new material facts that have arisen to warrant review of the terms. He asked the court to reject the application.

5. I have carefully considered this application. At the time the court granted bail, it was assumed that all the accused persons would meet the conditions set out by the court. The 3<sup>rd</sup> accused has been in custody for the over two years for the reasons that he could not raise the two sureties required herein. The said period cannot be said to be a short time. It is indeed a long time.

6. The fundamental purpose of bail is to ensure the accused attends trial. Even in an application for review, the court must put this issue into consideration. In my view, the accused has one surety who is his own mother and who will upon approval as a surety shoulder the responsibility of ensuring that the accused person attends court when required to do so.

7. Furthermore, the fact that the accused has failed to raise a second surety for over two(2) years is a matter that was not within his knowledge at the time he was granted bail. In my considered view, this is a new matter and in view of the provisions of Article 49(1) of the Constitution, I am convinced that review of the bail terms ought to be considered at this time.

8. I hereby find the application for review merited and grant the same on the following terms:-

a. That the 3<sup>rd</sup> accused will be released on bond of Kshs.500,000/= with one suitable surety.

b. All the other conditions imposed by the court on 15/03/2019 are applicable to the 3<sup>rd</sup> accused herein.

9. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 16<sup>TH</sup> DAY OF JUNE 2021.**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered through video link this 16<sup>th</sup> day of June 2021**