

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. E004 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

MOHAMED ALI ALIAS SHKURI.....ACCUSED

RULING

1. This Court on 10th December 2020 delivered a Ruling refusing to grant bail to the Accused person. The Court however advised that the Accused could renew the application after thirty (30) days in the event of changed circumstances.

2. Sure enough, the Accused person made a fresh application dated 25th February 2021. He states that he was arrested and arraigned before the Principal Magistrate in Maua Misc Criminal Case No. 89 of 2020 on 7th September 2020 and that upon application for bail, the Court Prosecutor agreed that he could be admitted to bond which is contrary to the averments of the Investigating Officer; That he was released on a bond of Ksh 100,000/=executed on his behalf by two sureties; That after his release on bond, he presented himself on two occasions at Kabachi Police Post for the identification parade and on both dates, the police did not have the witnesses; That at all material times after his release on bond and before the charges were preferred, there were no reports made to the police that he had interfered with the investigations or witnesses and that at all material time he presented himself to the police as required and he is therefore not a flight risk.

3. The Prosecution has opposed the application for bail vide the replying affidavit sworn by the Investigating Officer Philip Boen on 22nd March 2021. The contents of his affidavit are largely similar to those of the earlier affidavit touching on the seriousness of the offence that the accused person is charged with and the apprehension that if released, the Accused person may interfere with the witnesses.

4. This being the second time the Applicant is making an application for bail pending trial, this Court appreciates that such subsequent application will only be allowed if the circumstances prevailing at the time of making the earlier application have changed. See *Republic vs Mohamed Hagar Abdirahman & Another Garissa Criminal Case No. 1 of 2012 (2012) eKLR and Misc. Criminal Application No. 679 of 2004: Omba Gandu Magloire v. Republic.*

5. The key questions is whether the circumstances that led to denial of bail previously have come to change so as to make the Court have reason to grant bail. The basis for denial of bail was the consideration of the serious nature of the charge he is facing, the likelihood of interference with the witnesses who are said to be well known to him, prospects of interfering with suspects as well as arrest of co-suspects all in the interests of safeguarding the Prosecutorial mandate of the DPP.

6. Materially, the Prosecution indicates that investigations are still ongoing. Furthermore, no allusion to the fact of lead witnesses having already testified has been made. The Court in its previous Ruling categorically indicated that the reconsideration of bail was conditional on matters including conclusion of the primary investigations and the arrest of the alleged accomplices as well as taking of lead witnesses. None of these has been done.

ORDERS

7. Accordingly, for the reasons that the circumstances at the time of making the previous application have not changed, the Accused person's application for bail is declined.

DATED AND DELIVERED ON THIS 10TH DAY OF JUNE, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S G. K. Mwilaria & Co. Advocates for the Accused.

Ms Nandwa, Prosecution Counsel for the Prosecution.