



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HCCR NO. E002 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**EDDY KARIUKI NGARI.....1<sup>st</sup> ACCUSED**

**RAPHAEL WACHIRA KARIUKI.....2<sup>nd</sup> ACCUSED**

**FURTHER RULING**

1. Further to the ruling delivered on 16/06/2021, the advocate formerly of the 1<sup>st</sup> accused now deceased Mr. Mahugu had applied for release of mobile phone seized from the 1<sup>st</sup> accused upon his arrest. The reason given was that the said phone is needed for use to collect rent by the family of the 1<sup>st</sup> accused.

2. The application was opposed on grounds that the phone is an exhibit in this case which case is yet to be heard and determined. Mr. Ondimu submitted that the family of the accused can always procure another phone for purpose of rent collection.

3. The nature of this case is that it had a lot of preliminary issues to be determined before the trial begins and it appears we have not come to the end. I am convinced that all the preliminary issues require to be sorted out before the hearing kicks off. The case is now ready to taking directions and for fixing a hearing date.

4. It is therefore, correct to say that the prosecution who have gathered evidence including documentary and also others which include a motor vehicle and the said phone are yet to discharge their mandate in presenting that evidence to the trial court.

5. On 11/05/2021, this court ordered release of the vehicle of the 1<sup>st</sup> accused before in respect of which photographs were to be taken first and it was ordered that the same be produced during hearings. This was based on the premise that the vehicle may waste away if parked at the station for long and due to the fact that it can be produced during hearing. Further that after the photographs are taken, there is no much interference to alter or erase evidence that is likely to take place.

6. As for the nature of the exhibit in question herein, the mobile phone, this is different from a vehicle. A mobile phone is a communication too that is used in so many ways. If it contains critical data that forms part of the evidence, the prosecution will need to have the handset and the extracted data as evidence. It is an exhibit that can easily be lost without trace as opposed to a vehicle. The probability of interfering with data is also high and must be avoided at all costs to protect the evidence which the prosecution have spent time and funds to collect the process.

7. For the foregoing reasons, I find it not appropriate to release the mobile phone. The family of the deceased can easily and without much cost procure another phone for their intended use.

8. The prayer for release of the mobile phone is therefore declined.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 7<sup>TH</sup> DAY OF JULY 2021.**

**F. MUCHEMI**

**JUDGE**

**Further Ruling delivered through video link this 7<sup>th</sup> day of July 2021**