



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 43 OF 2020

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

FREDRICK NDUCHU KAMAU.....ACCUSED

RULING

1. **FREDRICK NDUCHU KAMAU**, is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code.
2. He applied to be released on bail and by the court's Ruling of 18th December, 2020, he was granted bond terms and alternative cash bail. He seeks by his application dated 25th September, 2021 those bond terms be reviewed.
3. In support of that application, the learned counsel for the accused deponed that since the issuance of bail to the accused, he has been unable to meet the terms thereof and has continued to remain in custody. The deponent then stated:-

“That it is my humble application for review of the bail and bond terms on the ground that the said terms were stringent for applicant's meagre means, which was tantamount to denial of bail”

4. The application is opposed by the State on the basis that the accused faces serious offence and the terms of bond/bail ought to be commensurate.
5. The application fails to set out the changed circumstances that justify review of bond/bail terms. This, in my view, is invariably a prerequisite to the court granting review of bond/bail terms. This indeed is the jurisprudence espoused in the decided cases.
6. In the case **REPUBLIC VS. FRANCIS MAINA WAIRIMU (2020) eKLR** it was held thus:-

“In an application for review of the denial of bail the applicant is under a duty to convince the court that there had been change of circumstances from the time when he was denied bail to warrant the court reviewing its earlier orders.”

7. Additionally, in the same vein, it was held in the case **REPUBLI VS. DIANA SULEIMAN SAID & ANOTHER (2014) eKLR** as follows:-

“The changed circumstances test is one of a common sense that where the circumstances of the case are so altered that compelling reasons are disclosed for the refusal of bail or for review of terms thereof, the court as a court of justice must reserve for itself a power to revisit the issue in the interest of justice not only for the accused but also for the complainant and the society at large. In the same way that an unsuccessful applicant for bail may repeat his application if his circumstances changed in such a manner as to favour his release on bail, so may the prosecution urge that the situation has deteriorated to compel a reconsideration of bail granted to the accuse”

8. The accused having failed to demonstrate changed circumstances, the notice of motion dated 25th September, 2021 is declined. It is dismissed.

9. At the reading of this Ruling, a hearing date shall be fixed.

10. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

CORAM:

COURT ASSISTANT: MAURICE

FOR DPP:- MS. KATHAMBI/KASYOKA

FOR ACCUSED :- SARAH NJOKI

ACCUSED : FREDRICK NDUCHU KAMAU: PRESENT

COURT

RULING DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE