

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 13 OF 2018

(Coram: Odunga, J)

EVANS MASAKU KASYOKI ALIA KIDERO.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR/RESPONDENT

RULING

1. The accused, **Evans Masaku Kasyoki**, faces the charge of Murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya for which a plea of not guilty was entered. The particulars of the charge were that on the night of 14th and 15th March, 2014 at Kikambuani Village, Kikambuani Sub-Location in Kanzala Location within Kangundo Sub-County in Machakos County, the accused murdered **Erick Makau Musyoka**.

2. In a ruling of this court dated 25th September, 2018, this court admitted the accused to a bail of Kshs 3,000,000.00 with two sureties of similar amounts. Since the hearing has been proceeding with three prosecution witnesses having testified. However by an application dated 29th April, 2020, he accused seeks that his bond terms be reviewed and/or revised to a lesser sum and a surety of a similar amount or such terms as the court shall deem fit in the circumstances. According to the accused, ever since his release he has strictly adhered to the bond terms by attending court as and when required to do so. However, one of his sureties, **Patrick Mwanzia**, has indicated to him that he intends to withdraw as a surety as he is in the process of subdividing his parcel of land for purposes of disposing off a portion thereon to enable him raise money to cater for his financial obligations. In that eventuality, the accused is apprehensive that he would be left in a precarious position which will then mean that he would have to conduct his trial in custody. The accused therefore prayed that his bond terms be reviewed in order to have one surety and have the said surety's title deed discharged promising to continue adhering to the bond terms.

3. The only ground upon which the application was opposed is that the offence with which the applicant is charged is serious and that the surety in question has not intimated to court that he intends to withdraw. It was on that basis that the Respondent contended that the assertions by the applicant were ill advised, premature and an abuse of the court process. Though the deponent asserted that the applicant's contention were false, the falsity of the same was never elaborated upon. In my view there is a distinction between an assertion that the depositions are false on one hand and that there is no evidence to support the same. Where one positively avers that the depositions in an affidavit are false, there ought to be a basis for doing so, particularly where the deponent has disclosed his source of information as the applicant did in this case.

4. As this court held in the said earlier ruling the paramount consideration in deciding whether or not to release an accused person on bail is the attendance of the accused at the trial. Since the primary objective of release on bond is the attendance at Court by the accused person, the terms to be imposed ought not be such that it amounts to denial of bail. In this case, the accused's contention that he has not violated the terms of his release has not been controverted. It is also my view that in cases where limitations to the right to bail contemplated above exist, the Court must, as provided in Article 24(1)(e) of the Constitution, be satisfied that there are no less restrictive means to achieve the purpose other than the denial of bail. In other words, the Court is required to explore the possibility of achieving the primary objective of granting bail, which is the attendance of the accused at the trial, by imposing such conditions that would ameliorate the possibility of the exceptions being a hindrance to the fair trial.

5. In the circumstances of this case, having considered the grounds upon which the accused seeks to have his bond terms reviewed, I am satisfied that he has made out a case for review. In the circumstances, I hereby set aside order (b) in the ruling dated 25th September, 2018 and substituted therefor an order that the accused shall be released on a bond of Kshs. 3 Million with one surety of the like sum. Accordingly, **Patrick Mwanzia Kinyota** is hereby discharged as the accused's surety in this case. The rest of the terms to remain the same.

6. Orders accordingly.

Ruling read, signed and delivered in open court at Machakos 21st day of May, 2020.

G V ODUNGA

JUDGE

In the presence of:

Mr Musya for Mr Muema for the accused

Mr Ngetich for the State

