REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

BUNGOMA HCCRC NO. 39 OF 2020

(CORAM: R. E. ABURILI - J.)

STATE.....PROSECUTION

VERSUS

SALOME NASAMBU.....1ST ACCUSED

BOAZ WAFULA ALIAS BOSS.....2ND ACCUSED

ENOCK WAFULA MASAI.....3RD ACCUSED

RULING

1. The accused persons herein are arraigned for Plea taking. The matter arises from the jurisdiction of Bungoma High Court and is before this court as a regional RECESS duty court.

2. The orders of the Deputy Registrar, Bungoma, dated 31/8/2020 transmitting the file to this court are clear that prior to the transmittal of the file, the advocate for the accused persons, Mr. Ratemo urged the court to avail the file to Siaya High Court recess duty court for the plea taking.

3. The accused persons are now before court and their counsel Mr. Ocharo Kebira applies that Plea taking be deferred because the Investigating officer has filed a misleading affidavit opposing the release of the accused persons on bond pending trial. The request to defer the Plea is vehemently opposed by Mr. Okachi Senior Principal Prosecution Counsel for the Republic on the ground that Plea taking is a separate process from bond application.

4. In a rejoinder, Mr. Ocharo submits that the two are co-joined.

5. I have considered the oral application and arguments for and against Plea taking.

6. It is clear to this court that Plea taking is a legal process and it is in no way connected to bond application. At the point of plea taking, the court does not predetermine whether or not to allow the accused to be released on bond pending trial.

7. It is only after taking the plea that the court can, even on its own motion, make appropriate orders on the question of whether or not the accused persons should be released on bond pending trial, bail being a constitutional imperative although not absolute, and where there are serious objections, the court is inclined to the accord both parties an opportunity to ventilate their respective positions before arriving at the just decision on whether or not to grant bail pending trial.

8. I find the request for deferral of plea taking not merited and decline the same. The accused persons are ably represented by counsel and their mental assessment reports are before court showing their fitness to plea to the charge before the court.

9. I order that the 3 accused persons do take plea and the question of whether or not they should be released on bond pending trial be addressed subsequent to taking of the plea.

10. Orders accordingly.

Dated, signed and Delivered at Siaya this 3rd Day of September 2020

R.E. ABURILI

JUDGE