



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MURDER NO. 13 OF 2018

REPUBLIC..... PROSECUTOR

V E R S U S

CATHERINE WAMBUI MAGONDU.....1ST ACCUSED

SIMON KAGIRI MAGONDU.....2ND ACCUSED

RULING

1. The application pending before court is dated 18/02/2019 seeking review of bail pending trial for the accused persons who were charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. That the court in its Ruling on 03/12/2018 provided for the review of the application for bail and directed that the matter be heard on priority and the key witnesses to be called to adduce evidence. That the said key witness has already adduced evidence and therefore no reason for the accused persons to continue to be held in custody.

3. Prosecution.

In response, they stated that the review was after the witnesses have testified. That there is another witness who is vital and he had to relocate due to fear and the fear is still there as they are having difficulties availing the witness.

4. In the previous application for bail pending trial, the prosecution had proven that the family of the accused persons had threatened the key witness Florence Ndunge Muli and reports have been filed in that regard. There was no mention of any other key witness and 3 prosecution witnesses have now testified including the said Florence Ndunge Muli.

5. The issue which arises is review of bail application.

6. The court has discretion to review bail application based on the circumstances of the case.

7. In Republic v Leonard Kanari Gitau [2017] eKLR

The court in considering similar application stated;

From the ruling under review, it is clear that this court declined to grant the applicant bond on the ground that there was possibility of the same interfering with two key prosecution witnesses based on the special relationship between them and the accused and further due to the fact that the same was an influential member of society who was a licenced gun holder who was likely to create fear in the potential prosecution witnesses.

From the material placed before the court, the said two witnesses have since testified before Lady Justice Lesit and their evidence is now safely on record. It has further been deposed by the accused person, which has not been controverted, that upon his arrest he surrendered his firearm to the police. This therefore means that the circumstances prevailing as at the time when the same was denied bail have since changed thereby entitling the same to right of review.

8. Republic v Erastus Ngura Odhiambo [2015] eKLR

The court in considering similar application stated;

I want to be guided by the paramount consideration whether the accused will attend trial if released on bond. In view of the

fact that I have received evidence of two crucial witnesses for the prosecution, I am persuaded that the landscape has changed considerably in favour of the accused given the earlier ruling by Hon. Justice Kimaru. In the circumstances therefore I will allow the application and admit the accused to bail.

9. These are persuasive decisions on the subject before this court. Bail is a constitutional right which should not be denied to an accused unless there are compelling reasons. It is premised on the right of an accused to be presumed innocent until proved guilty. As such the court should guard against punishing an accused person by denying him bail before he is convicted. The principle consideration when granting bail is whether the accused will turn up for his trial.

10. Looking at the objection which was raised by the prosecution, it was very specific that one witness Florence Ndunge was threatened. This witness was under witness protection and has since testified. After the witness testified, the State did not indicate that they still objected to the release of the accused. It is only after this application was made that the State brought the issue of another witness. This was not candid. In any case no reason was given as to why the witness was not called and the witness is said to have relocated to unknown place. I find that there is now no compelling reason to deny the accused persons bail. Since the key witness whose particulars were given has testified, there is need to review the ruling which denied the accused persons bail. I find that the application has merits. I allow it and order that the accused may now be admitted to on bond/bail. The accused will be released on a bond of Kshs 1,000,000/- each plus one like surety each.

11. The sureties be approved by the Deputy Registrar.

Dated at Kerugoya this 12th day of March 2019.

L. W. GITARI

JUDGE

12/3/19

Ruling read out in open court.

L. W. GITARI

JUDGE