



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 70 OF 2016

REPUBLIC.....PROSECUTOR

V E R S U S

PRISCILLA WAIRIMU NJERU.....1ST ACCUSED

GODFREY MURIITHI GACHORA.....2ND ACCUSED

ROSEMARY NKONGE.....3RD ACCUSED

MARY MUTHONI KAMAU.....4TH ACCUSED

RULING ON BOND TERMS VARIATION

1. The accused Nos. 1, 2 and 4 by a **Notice of Motion** dated 24th April 2019 brought under **Article 50** of **Constitution** sought one order as follows:

That the bail and bond terms be varied for us to be able to access the hospital and continue with our normal duties pending hearing and determination of the matter.

2. The application is based on the grounds on the face of the application namely:

(1) That on 16th of May 2018 the court did visit the scene of crime and a hearing was conducted.

(2) That we have complied with the bail bonds and terms.

(3) That we have received a letter dated 3rd April, 2019 from the Kenyatta National Hospital lifting the interdiction.

(4) That I am therefore required to my duty station which requires me to access the hospital.

(5) That it is just and equitable to grant the prayers granted.

3. The application is supported by an affidavit sworn by Godfrey Muriithi Gachora, the 2nd accused and annexures thereto.

4. Mr. Ndolo, holding brief for Mr. Ombetta, Counsel for the accused Applicants urged that at the time this court granted bond to the accused persons it made as part of the terms of bond an order prohibiting the accused persons from visiting Kenyatta National Hospital where the incident occurred. Counsel urged that the accused have had their interdictions lifted by the Hospital and are required back to work.

5. Ms. Onunga holding brief for Mr. Mwalike for the Prosecution stated that she had just been served with the Notice of Motion by the defence and was not in a position to make any contribution to it as his colleague was unaware of the application and therefore could not give any directions. Counsel left the matter to the court to decide.

6. I have considered the application. The bond was granted by this court. However this case is being heard by another judge who has heard some witnesses and even visited the locus in quo.

7. The order granting the accused bail on terms was issued by this court on 14th November, 2016. Under Order 3 certain terms were imposed as part of the bond concluding paragraph 3(c) which prohibited the accused from visiting the hospital where the incident occurred.

8. It has been more than two and a half years since the prohibition order was made. The accused have obeyed the said order. The letters lifting of the interdictions of all three accused/applications are annexed to the affidavit sworn in support of this application. It is dated 3rd April, 2019.

9. The purpose of the prohibitions order was to ensure the accused did not return to the locus in quo in order to preserve the integrity of the case. The court has noted that the trial court visited the scene and has heard material witnesses from that place. In light of the development in this case, the prohibition order is no longer necessary.

10. I will allow the application by the three 1st, 2nd and 4th accused, and accordingly lift the order No.3 (c) together with the order to report to the Officer Commanding Kilimani Police Station. The order should be extracted and served, *inter alia*, to the OCS Kilimani Police Station for his information.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF MAY, 2019.

LESIIT J

JUDGE