



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 60 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SARAH WAIRIMU KAMOTHO.....ACCUSED

RULING ON BAIL

Introduction

Sarah Wairimu Kamotho, herein referred to as “the accused” or “the applicant”, is charged with murder contrary to section 203 as read with section 204 of the Penal Code as follows:

SARAH WAIRIMI KAMOTHO: On the night of 19th and 20th July 2019 within Nairobi County in the Republic of Kenya jointly with others not before the court, murdered TOB CHICHOU COHEN.

The accused was arraigned before this court on the 12th day of September 2019 to answer to these charges. For reasons that are well recorded in the court file, the plea was not taken on that date or the subsequent dates until 3rd October 2019. On this date, the charge and all its particulars were read over and explained to the accused person. She pleaded not guilty. This paved the way for the hearing of her application to be admitted to bail/bond pending the hearing and determination of this case.

The Application

The application for bail, brought under certificate of urgency, is dated 16th September 2019. It was filed on the same date. It is anchored on Articles 27(1), 40(3) 49 and 50 of the Constitution of Kenya, Section 123A of the Criminal Procedure Code, Cap. 75 Laws of Kenya and all other enabling provisions of the law. The grounds in support of the application are found on the face of the application and on the Supporting Affidavit sworn by the accused on 16th September 2019, a Supplementary Affidavit sworn by the accused on 26th September 2019 and oral submissions made in court by Mr. Murgor, learned counsel for the accused.

The affidavits I have referred to above are detailed. They contain depositions on other matters that in my view are not related to this application. I will therefore refer to depositions that directly have a bearing on this application. For instance the accused has made depositions on matters touching on her quest for her matrimonial property a matter that, in my view, belongs to another forum. The depositions also touch on what transpired from the time the whereabouts of the deceased became a police matter to the time the accused was arraigned in court.

On depositions touching on the bail application before this court, the accused deposes that the prosecution has not attached any evidence to the charge sheet to inform her of the case against her. She states that failure to provide such evidence has infringed on her rights under Article 50 of the Constitution of Kenya. She deposes that the prosecution has not provided compelling reasons to persuade this court to deny her bail/bond; that there is no evidence that she is a flight risk given that she voluntarily surrendered her passport to the investigating officers and therefore she is not in a position to flee the jurisdiction of this court. She deposes that there is no evidence that she will interfere or threaten witnesses. She deposes that she has cooperated with the police during investigations in this matter and accuses the police of leaking information relating to this case to the media leading to her persecution. She also accused the police of working with the siblings of the deceased to disinherit her.

In her Supplementary Affidavit in response to the two affidavits by Gabrielle Hannah Cohen-van Staten, sister to the deceased, and Dr. Bernard Cohen, brother to the deceased, the accused dwells at length on matters that are not related to this case or to this bail application. I find what is relevant to this application in paragraph 17 of her Supplementary Affidavit. She deposes that there is no evidence provided to the court to show that she is a flight risk; to show the nature of the offence and who committed it and how it was committed; to show that the

deponents will be subjected to physical violence or abduction by the accused or that both are at risk as prosecution witnesses and that there is no evidence that the accused will interfere with witnesses.

The accused further deposes that Gabrielle Hannah Cohen-van Straten and Dr. Bernard Cohen live outside Kenya and that there are no tensions between her and the two siblings of the deceased given that they cooperated during the post mortem of the body of the deceased and during his burial. She deposes that her matrimonial home is in the hands of the police; that her workers have left and that her dogs have been taken to an unknown place. She deposes that the business she was running with the deceased will collapse in her absence and that she needs to be free to fight for her rights as a widow and co-owner of the matrimonial home. She also seeks to be released in order to adequately instruct her legal counsel.

Submissions by the accused

In his oral submissions on behalf of the accused, Mr. Murgor submitted that the prosecution has not provided evidence or annexed it to the charge sheet as the law requires and that any evidence fabricated after this application will have no bearing on the application. He submitted that the law is clear that all accused persons irrespective of the offence they are charge with have a constitutional right to be granted bail/bond. He submitted that it is not disputed that the investigating officers have the travel documents of the accused and therefore the question of her being a flight risk does not apply. He submitted that the matrimonial home of the accused is under the possession of the DCI who have the key to the home and therefore the premises are secured and the accused cannot interfere with the premises. He submitted that the accused has cooperated with the police.

He further submitted that the accused was not arrested for murder but for forgery for which the police have nothing against her; that the accused is being detained without evidence; that the matrimonial home of the accused has not been secured as a crime scene despite the police treating it as such. He submitted that the accused is not a flight risk and she is ready to abide by the terms and conditions of bail this court will give. He submitted that the defence does not have a list of witnesses and therefore the accused does not know who the prosecution witnesses are and cannot intimidate, interfere or influence witnesses who are not know to her. He submitted that the accused is presumed innocent until there is prove to the contrary; that the accused needs to pursue her matrimonial property in court to ensure that no one denies her the right to that property; that she cannot do this while in custody and that she was a business partner in her later husband's business which business is suffering in her absence.

Mr. Murgor told the court that the accused has a supportive family. He informed the court that the accused's father Japheth Kamotho and mother Mary Gathoni were both in court. He told the court further that the accused has supportive friends, namely Mama Lucy Mwangi and Betty Wamaitha, who were also in court. He submitted that the family and the friends of the accused will accommodate her and account for her whereabouts during the pendency of this trial. Mr. Murgor questioned the manner in which the body of the deceased was discovered in the compound of the matrimonial home of the accused and the deceased suggesting that it may have been planted there. He told the court that the police took possession of the matrimonial home of the accused without a court order and there is nothing to stop the court from giving orders to have the accused to repossess her home.

In reply to the two affidavits by Gabrielle Hannah Cohen-van Straten and Dr. Bernard Straten, Mr. Murgor submitted that there is no evidence by the two that the accused is a flight risk and will abscond from the jurisdiction of this court. He submitted that the two siblings of the deceased do not live in Kenya and therefore their allegations that their lives are in danger are not supported by evidence. He urged this court to grant this application submitting that there is no evidence by the two to persuade this court to deny the accused bail.

Submissions by the Prosecution

The application by the accused to be released on bail is opposed by the prosecution and the siblings of the deceased. The prosecution, in opposing the application, relied on the Replying Affidavit sworn by IP Maxwell Otieno who describes himself as one of the investigating officers in this case. It is a 51 paragraphs affidavit. I have carefully read it. Some of the materials contained in that affidavit are of general nature and do not relate to the bail application before this court. It gives history of the circumstances leading to the involvement of the police in trying to locate the whereabouts of the deceased and the eventual arrest of the accused. The affidavit further refers to certain people whose names are not given as the sources of some of the information contained in the affidavit. The relevant parts of that affidavit to this bail application relate to what the prosecution has advanced as compelling reasons why the accused should not be released on bail/bond. These are enumerated below as follows:

- i. That the accused is flight risk because of the seriousness of the offence she is facing.
- ii. That the accused has no fixed abode given that her residence has been secured by the police as the scene of the crime.
- iii. That the accused is likely to interfere with witnesses given the nature of this crime and further that the accused and her agents have attempted to interfere with witnesses.
- iv. That the character of the accused in demanding to be present during the burial of the deceased and her behavior during that burial caused public disturbance leading to stone throwing by the public. Further that her release on bail/bond will disturb public order and undermine public peace and security as demonstrated by what happened during the burial of the deceased.
- v. That the investigations and forensic analysis at the crime scene are still on-going and if released the accused will interfere with the investigations.
- vi. That the accused cannot be trusted after she went against court's orders during the burial of the deceased and addressed the media on issues touching on investigations.

In support of the Replying Affidavit, Ms. Gichuhi submitted that the investigations are still on-going to trace other persons who may be involved in the death of the deceased and that if released on bail/bond the accused may interfere with the investigations. She submitted that forensic analysis is on-going at the scene of crime to trace more evidence and therefore if the accused is released she may interfere with the scene of crime. She submitted that the accused lied to the Netherlands Embassy officials that the deceased had left the country and that she did not report the deceased as a missing person until 12 days after the embassy had contacted her. She submitted that the consent to have the accused attend the burial of the deceased was to prevent the accused delaying the burial which would have gone contrary to Jewish rites to bury the body immediately. She submitted that the accused caused disturbance at the burial of the deceased as a result of which the public stoned her convoy. She submitted that if the accused is released on bail/bond this will disturb public order and security.

It was further submitted that the accused through her agents has attempted to interfere with witnesses; that the prosecution has received information that the defence counsel has been contacting witnesses which amounts to intimidation. It was submitted that the prosecution attached two statements that have been redacted but the accused still knows who the prosecution is talking about and she is likely to intimidate and interfere with them. It was submitted that the offence the accused is facing is a serious one that attracts death sentence and that the prosecution has strong evidence against the accused. It was submitted that all these factors will motivate the accused to abscond if she is released on bail/bond.

Ms. Gichuhi further submitted that the accused has no fixed abode and that she has not indicated an alternative residence other than the scene of crime and that she has not shown how she will support herself if released on bail/bond. Ms. Gichuhi urged the court to find that on a balance of probability and based on the material presented in court this court has a duty to protect the integrity of the trial and decline this application. It was submitted that the accused can still defend her succession cause while in custody through her legal counsel. This court was referred to Bond and Bail Policy Guidelines and relevant authorities on bail/bond.

Submissions by the victims

In their separate but similar affidavits Gabrielle Hannah Cohen-van Straten and Dr. Bernard Cohen, sister and brother of the deceased respectfully, deposed that the right to bail is not absolute; that the offence the accused is facing is serious and therefore the accused may flee the jurisdiction of this court; that they fear for their lives and personal security as victims and as sister and brother of the deceased and witnesses; that the accused is likely to interfere with witnesses; that if released this will trivialize the seriousness of this offence and that the accused has not presented evidence of sexual harassment as claimed in paragraph 8 of the accused's Supporting Affidavit.

In his brief submissions Mr. Ombeta for the victims told the court that Article 49 of the Constitution of Kenya provides for compelling reasons to decline releasing an accused person on bail/bond. He submitted that compelling reasons are not defined. It was submitted that the deceased has been denied his right to life and dignity; that the accused has not provided particulars of where she will reside if released on bail/bond; that the matrimonial home is a crime scene and cannot be interfered with; that the accused is likely to flee the jurisdiction of this court despite her not having her passport; that there is evidence of interference of witnesses even when the accused is in custody and that the post mortem report reveals the seriousness of the injuries sustained by the deceased; that the accused may interfere with vulnerable witnesses and that the victims are afraid of the accused and require protection.

Reply to Prosecution Submissions

In reply to the issues raised in the Replying Affidavit and the submissions by the prosecution, Mr. Murgor submitted that the prosecution has not provided evidence in support of what they term as compelling reasons. He submitted that the death of the deceased has not been tied to the accused and that the prosecution is trying to frame her. He submitted that the right to bail is enjoyed by all accused persons irrespective of the offence charged. He submitted that the siblings of the deceased have not stated what IP Maxwell Otieno deposes in the Replying Affidavit in regard to accused's behavior in forcing her hand in taking part in the burial of the deceased and that her participation in the burial followed a negotiated compromise between the defence and the siblings of the deceased. Mr. Murgor further submitted that the accused did not cause a breach of peace at the burial of the deceased. Instead, the politicians who attended the burial attracted crowds to the burial site and made accusatory statements leading to the discontent of the public. He submitted that if there was breach of peace at the burial, then it is because of the accusatory remarks made by the politicians.

On the issue of interference with prosecution witnesses, Mr. Murgor submitted that the defence does not know who the witnesses are and until the witnesses are known the defence cannot be accused of interfering with the witnesses. He submitted that the defence has no problem with the police restricting access to the residence of the accused so long as there is no damage to the property. He submitted that it cannot be claimed that the accused has no fixed abode when it is the police who have taken over her residence. He submitted that the accused has parents and that her father lives in Lanet in Nakuru and that she also has friends in Nairobi who are willing to accommodate her. Mr. Murgor gave the names of two friends of the accused as Mama Lucy Mwangi of House No. 19 Kilileshwa Nairobi and Betty Wamaita of Apartment A9 State House Crescent. He told the court that the accused will reside in the two homes if granted bail/bond and that the defence is ready to give testimonials to that effect. Mr. Murgor reiterated that the prosecution has not provided compelling reasons to persuade this court to deny the accused bail/bond. He urged the court to allow the application and admit the accused to bail/bond on reasonable terms and conditions.

In support of the application and the submissions, Mr. Murgor relied on the following cases:

- i. High Court Criminal Case No. 51 of 2018 - Republic v. Joseph Kuria Irungu alias Jowie & another [2018] eKLR.**
- ii. High Court Criminal Case No. 76 of 2015 – Republic v. Samuel Ngunga Kiilu [2016] eKLR.**
- iii. High Court Criminal Case No. 6 of 2016 – Republic v. Godfrey Madegwa alias Godi & 6 others [2016] eKLR.**
- iv. Criminal Appeal No. 113 of 2018 – Michael Juma Oyamo & another v. Republic [2019] eKLR.**

v. Republic v. Zacharia Okoth Obado & 2 others [2018] eKLR.

vi. Republic v. Dwight Sagaray & 4 others [2013] eKLR.

vii. Republic v. Danford Kabage Mwangi [2016] eKLR.

viii. Republic v. Richard David Alden [2016] eKLR.

Determination

The Constitution of Kenya guarantees certain rights to an accused person. At the stage where we are in this trial the applicable articles of the Constitution are Article 49 (1) (h) and Article 50 (2) (a), (b) (j). Article 49 (1) (h) provides the right of an arrested or accused person to be released on bail/bond on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released. Article 50 is titled "Fair hearing". This article guarantees an accused person the right to a fair and public hearing. The right to a fair hearing includes but is not limited to the right to be presumed innocent until the contrary is proved; the right to be informed of the charge with sufficient detail to answer it; and the right to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence. The right to fair trial under Article 50 cannot be limited. However, the right to bail is not absolute and can be limited where compelling reasons are proved. The standard of proof is a balance of probability.

I have enumerated above what the prosecution has advanced as compelling reasons. In summary form it was claimed that the accused is a flight risk; that she has no fixed abode; that she will interfere with witnesses; that she will interfere with investigations; that her release will cause public disturbance and undermine public peace and security; that her release will trivialize the trial and that the accused breached court orders by addressing the public during the burial of the deceased. To these reasons, the defence has maintained that the prosecution has failed to provide evidence in proof.

I have taken time to read the application and the supporting affidavit and supplementary affidavit. I have carefully read and understood the Replying Affidavit and the affidavits by Gabrielle Hannah Cohen-van Straten and Dr. Bernard Cohen and all the attachments to all the affidavits. I have read with care and considered all the authorities cited by the applicant. I have read the relevant parts of the Judiciary Bail/Bond Policy Guidelines. It is worth repeating here that bail is a constitutional right that is limited where compelling reasons exist. This is the thread running through all the authorities cited in this application.

What amounts to compelling reasons has not been defined in the Constitution or in any written law. The Judiciary came up with Bail/Bond Policy Guidelines to fill the gap and to guide the courts in determining applications for bail/bond. Section 4.9 of the Bail/Bond Policy Guidelines lists what the courts have stated as constituting compelling reasons. These include:

- i. The nature of the charge or offence and the seriousness of the punishment to be meted out if the accused is found guilty.
- ii. The strength of the prosecution case.
- iii. The character and antecedents of the accused person.
- iv. The failure of the accused person to observe bail or bond terms.
- v. The likelihood of interfering with witnesses.
- vi. The need to protect the victim or victims of the crime.
- vii. The relationship between the accused person and the potential witnesses.
- viii. The best interest of child offenders.
- ix. The accused person being a flight risk.
- x. Whether the accused person is gainfully employed.
- xi. Public order, peace and security.
- xii. Protection of the accused persons.

I have considered the reasons advanced by the prosecution as constituting compelling reasons and resolved the issues raised in this application as follows:

Flight risk

On this ground, this court was told that DCI is holding the passport of the accused after she voluntarily handed it to the police. This fact was admitted by the prosecution. This court was not given information to show that the accused holds another passport. This court does not take the issue of flight risk lightly. This is because if an accused person flees the jurisdiction of the court then he/she cannot attend court in order

to face the charges facing him/her. This would result in compromising the trial itself. In the Madegwa case cited above, the court stated that:

“Bail pending trial is a constitutional right and the only limitation is when there are compelling reasons not to release the accused on bail/bond. The consideration when the court is considering whether or not to release an accused person on bond or bail is primarily whether the accused will attend court at and during the trial..... An accused person is required to be present during the hearing of his case and while granting bail the court should be satisfied that he will be present. That is to say the accused is not a flight risk, one who will get outside the jurisdiction of the court and therefore fail to honour his bond terms to attend court during trial.”

On this point, I find and hold that the prosecution has not provided this court with evidence that the accused will flee the jurisdiction of this court given that her passport is being held by the police. In ensuring that an accused person attends court when required to do so, it is the duty of the trial court to carefully consider the matter and put in place terms conditions of bail that will ensure that this goal is achieved.

Fixed abode

On this issue, it is clear to me that there is no dispute that the residence of the accused, being Plot LR No. 2951/449 situated on Farasi Lane in Nairobi, has been taken over by the police from the DCI. They are guarding the premises and treating it as the scene of crime. It was argued that the accused has not provided an alternative place of abode. It is clear to me that the accused's state of being without abode is not self-created. It is through the actions of the police in securing her residence as a crime scene. It has been argued by the prosecution and the siblings that the accused has not provided particulars of where she will live in the event this court were to release her on bond. It was also argued that she has not provided information on how she will support herself since she was depended on the deceased. To respond to this the accused has provided information that her parents are supportive of her and that her father lives in Lanet in Nakuru. She has also stated that she has two friends Mama Lucy Mwangi and Betty Wamaitha who are willing to take her in. I have taken these issues into consideration. Indeed the fact that the accused finds herself without a place of abode is because of the actions of the police. Given that the accused has given some information on alternative places she can reside during the pendency of this trial, it is my view that this is an issue that this court can resolve by putting in place measures to ensure that the ends of justice are met.

Interference with witnesses

This issue has been raised by both the prosecution and the siblings of the deceased. The accused through her legal counsel has maintained that up to this moment the defence does not have a list of witnesses and therefore the accused or her counsel do not know who the witnesses for the prosecution will be. This is a fact that is not denied. Indeed during these proceedings, the prosecution sought more time to place some of their witnesses in the Witness Protection Programme. On 3rd October 2019 the prosecution was seeking five working days to finalize with the Witness Protection Agency on the protection of its witnesses and to redact the statements of these witnesses. The court declined this application noting that the prosecution has had all the time from 26th September 2019 when this bail application was supposed to be heard to sort out the issue of witness protection. It is noteworthy that from 3rd October 2019 to today, the five working days have elapsed and it is my belief that the prosecution have finalized in protecting its witnesses.

Further, I find no evidence that the accused is likely to interfere with witnesses. As I stated in Republic v. William Kipkorir Kipchirchir & Another [2018] eKLR, ***“...intimidation, interference and threatening of witnesses are serious matters and they are compelling reasons where evidence of such intimidation, interference or threats is provided to the trial court..... in the absence of the evidence to support the same, these remain just mere suspicions and fears harboured by the prosecution”***

Having carefully considered this matter and having noted that the prosecution has had adequate time to place its vulnerable witnesses in the witness protection programme and that the list of witnesses and their statements have not been supplied to the defence, it is my finding and I so hold that the prosecution has not provided evidence to prove on a balance of probability that the accused will interfere with witnesses.

Interference with investigations

On this matter, it is not disputed that a second suspect has been arrested in connection with the death of the deceased and charged in High Court Criminal Case No. 65 of 2019. He is awaiting taking of the plea. It is not disputed that the accused was arrested on 28th August 2019. She has been in police custody until she was arraigned in court on 12th September 2019 to answer to the charge of murder. She was subsequently remanded at Langata Women's Prison. It is also on record that the residence of the accused and the deceased is in the hands of the police as scene of crime in this matter. The police have been in a position to collect all the evidence they required and are still in that position given that they are guarding the premises as a crime scene. When I take into account the length of time it has taken for the DCI to collect and preserve evidence and the fact that they guard what they believe is the scene of crime, I can only state that this ground has not been proved. Further, for ends of justice to be met and to protect the rights of all the parties, this court has the powers and discretion to put in place conditions that will ensure any pending investigations at the scene of crime are not interfered with.

Public disturbance and trivializing of the trial

I find no evidence to support this allegation. IP Maxwell Otieno in paragraph 16 of the Replying Affidavit refers to unnamed persons as the source of information that the accused and her counsel caused disturbance at the burial of the deceased. This is not evidence and the IP Otieno must know this. Further, it has not been demonstrated that the accused is in a position to cause public disturbance, undermine public peace or cause public insecurity. Bail/bond is a right that is available to all accused persons irrespective of the offence. I am also of the view that other accused persons facing murder charges have been released on bail/bond. Their release does not in any manner trivialize the seriousness of the offence of murder.

Finally, on the issue of the accused breaching a court order by addressing the public during the burial of the deceased, it is my view that this matter will be subject to the anticipated application for contempt of court. It is prudent to decline discussing it here and wait until the

application for contempt is filed and argued.

The Court of Appeal in *Michael Juma Oyamo & another v. Republic [2019] eKLR* adopted the definition of the High Court in *Jakton Malende and 3 others Criminal Case No. 55 of 2009* as follows:

“.....The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the Constitution.”

In overturning the decision of the High Court in declining to grant the appellants bail, the Court of Appeal in the *Michael Juma Oyamo case* stated as follows:

“.....we must state that evidence as contained in the witness statements before it has been subjected to cross examination and careful analysis thereafter bears very little weight, unless where an accused person has expressly and voluntarily admitted the correctness of the witness statement.”

This was in reference to the argument that the case against the accused is serious and the evidence is strong. I must point out here that unlike in the case under reference, in this case the defence does not even have the benefit of witness statements. Despite this, the prosecution and the victims submitted that the case against the accused is a serious one attracting death sentence once proved and further that the evidence is strong. The same principle by the Court of Appeal in the case above applies in this case.

I wish to state that I have also considered the authorities cited by the victim, *Republic v. Kunguru Martin Opiyo [2016] eKLR and Republic v. Zacharia Okoth Obado [2018] eKLR*. I have distinguished the two cases with the case before me in that the circumstances were different and the courts in those cases had the discretion to decide as they did.

In conclusion therefore it is my finding that the prosecution has failed to provide compelling reasons on a balance of probability why this court should decline granting this application. For this reason it is my finding and I so hold that this court has no reason to deny the accused her right to bail in the absence of proof of compelling reasons. Consequently, I hereby allow the application and admit the accused to Bail/bond. Having said that, there are certain measures this court must take to ensure that the ends of justice are met and that the rights of the deceased and the victims are secured. These are the conditions that must be met before the accused can enjoy her liberty pending the hearing and determination of this case:

- i. The accused shall execute a bond of four million shillings (Kshs. 4,000,000).**
- ii. The accused shall provide two sureties with each surety providing a bond of two million shillings (Kshs. 2,000,000).**
- iii. In the alternative the accused shall deposit with the Registrar of this court a sum of Kenya Shillings Two Millions (Kshs. 2,000, 000) as cash bail.**
- iv. The accused shall not go anywhere near the matrimonial home being Plot LR Number 2951/449 along Farasi Lane in Mugomoini Close Nairobi. If for any reason the accused requires certain items, which may be necessary, from the said premises now under DCI, the accused shall apply for authority from this court to visit the premises and she shall give particulars of what she requires from the premises for the determination and directions of this court.**
- v. The accused shall not contact, interfere or intimidate any witnesses and more specifically the persons who were working under her before she was arrested, whether directly or by her agents. This includes the siblings of the deceased, Gabrielle Hannah Cohen=van Straten and Dr. Bernard Cohen.**
- vi. The accused shall not set foot or go anywhere near the businesses named as Kenya Golf Safaris and Lotus Care Travels or any other businesses being operated by the deceased, whether those businesses were joined owned with the accused or not until further orders and direction of the court.**
- vii. Before the accused can be allowed to execute this bond, she shall provide testimonials from her father Japheth Kamotho and her friends Mama Lucy Mwangi and Betty Wamaitha as proof that they are willing to accommodate the accused during the pendency of this trial.**
- viii. The accused shall also provide her testimonial as proof on how she will sustain herself during the pendency of this trial.**
- ix. The DCI shall continue holding the accused's passport until this court makes orders to the contrary.**
- x. The accused shall remain in custody pending the presentation in court of the testimonials as ordered in (vii) above.**

Orders shall issue accordingly.

Dated, signed and delivered this 11th day of October 2019 in open court.

S. N. Mutuku

Judge