



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 13 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

EDWIN MWENDA NJERU.....ACCUSED/APPLICANT

R U L I N G

A. Introduction

1. This is a ruling on the oral application made by the accused's advocate for review of the ruling delivered on the 23/07/2018 in which this court denied the accused bail.
2. In the ruling dated 23/07/2018, the accused was denied bail on the ground that there were valid threats on the witness and this constituted compelling reasons to deny the accused bail.
3. The prosecution opposes the application for review on the grounds that PW1 still lives with her parents who are parents of the accused. The prosecution further opposes the application for review as PW1's parents are opposed to her being taken into witness protection as she is sitting KCSE exams this year.
4. The prosecution also rely on a letter from the Directorate of Criminal Investigations in Mbeere North that there are three crucial witnesses whose lives would be endangered if the accused was granted bail. Further, it is argued that denial of bail to the accused is for his own benefit as he would be endangered by members of the public who are baying for his blood as a result of his alleged crime.
5. In rejoinder, counsel for the accused stated there was no evidence presented to show that the accused's safety is threatened. It was further stated that the witnesses ought to be taken under protection if they are in danger. The accused further promised not to interfere with any prosecution witness.

B. Analysis and Determination

6. I have considered the application and the submissions by both counsels in this matter. The issue for consideration in this matter is whether there are any changed circumstances demonstrated by the applicant to warrant review of bail.
7. Section 123 of the CPC [as amended by the Constitution of Kenya 2010 to permit bail for all criminal cases] makes bail available at all times - where any arrested person "*is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail.*"
8. What change of circumstances have been demonstrated? The counsel for the accused argues that PW1, who was the reason bail was denied, has already testified and as such he should be released on bail. The prosecution opposes the application for review on the grounds that PW1 still lives with her parents and is yet to sit her exams which her parents prefer she does whilst living with them and not on witness protection.
9. I also take judicial notice of the letter from the Directorate of Criminal Investigations in Mbeere North dated 22/10/2019 to the effect that the accused should be denied bail as there were 3 crucial witnesses whose lives would be endangered if the accused was granted bail. Further, it is argued that denial of bail to the accused is for his own benefit as he would be endangered by members of the public who are baying for his blood as a result of his alleged crime.
10. The Supreme Court of India in the case of **Gulabrao Baburao Deokar v. State of Maharashtra and Ors. Criminal Appeal 2113 of 2013**, cited its previous decision in **Masroor v. State of Uttah Pradesh and Anor. 2009 (14) SCC 286** as follows:

“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.”

11. I consider that the principles generally of the accused’s ability or propensity to interfere with the due administration of justice having regard to the circumstances of the case and the considerations of the society or public interest are matters to be considered in considering a review of bail. See also **Aboud Rogo Mohamed & Another v. R, Nairobi HCCR.C. No. 793 of 2010** and **The Defence Forces Council & 6 Others v. Gabriel Kirigha Chawana & 26 Others, Court of Appeal Civil Application No. 9 of 2014.**

12. It is not denied that PW1 is yet to do her K.C.S.E exams or that there are three crucial witnesses namely, Tabitha Njoki Ngugi, James Kinyua Mugo and Onorota Kanini Nyaga who are yet to testify who would be endangered were the accused to be released. However, I do note that there has been no evidence presented showing that the accused’s safety would be in danger if released.

13. The scales of justice in this case appears to lie in the balancing of the accused’s right to bail against the interest of the public who have a stake in these criminal proceedings. On the one hand, there is the accused person’s right to be presumed innocent and to be released on bail and there is the public interest as well as security of the witnesses on the other hand.

14. In its ruling, this court was concerned with only one witness Diana Mukami Njeru who has already testified as PW1. The other witnesses named at the time of hearing this review application were not the subject of this ruling. The prosecution have a way of dealing with new cases of threats by having them reported to the police and investigated.

15. Now that PW1 has already testified, I find that the court may positively consider this review application and impose any conditions to ensure the security of PW1 and any other witnesses.

16. I find the review application merited and I hereby allow it in the following terms: -

a) That the accused may be released on bond of Kshs. 500,000/= with two sureties of a like amount.

b) That the is barred from accessing his parents home and the home of the deceased’s parents and any area around the homes of the radius of ten (10) kilometres.

c) That the accused will not meet or talk on phone or through social media to any person of the remaining prosecution witnesses specifically Diana Mukami, PW1, Tabitha Njoki, James Kinyua and Onorata Kanini during the pendency of this trial.

d) That the accused shall not interfere or threaten any prosecution witness in this case during its pendency.

e) That the accused shall deposit his passport, if any, in court and not leave the jurisdiction of the court pending disposal of the case.

f) That the accused will attend monthly mentions of the case before the Deputy Registrar pending its disposal.

17. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF NOVEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Nandwa for State

Accused/Applicant