



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 67 OF 2015

REPUBLIC.....RESPONDENT

VERSUS

EZEKIEL MOMANYI ONSONGO.....1ST ACCUSED

PHILIP MANYURA MAROKO.....2ND ACCUSED

DENNISON MOSE MAROKO.....3RD ACCUSED

RULING

BACKGROUND

1. On 29th day of October, 2015 Hon. Justice Lesiit delivered a ruling wherein she dismissed the Applicants' application for bond and found that there were several compelling reasons to deny the accused persons bail.

2. On 1/3/2016 this matter commenced for hearing before me and to date the court has heard the evidence of a total of twenty one (21) prosecution witnesses. In the meantime on 23rd February, 2016 Justice Lesiit as regards the 2nd accused person rejected his application for review on the ruling on the application for bond/bail pending trial and on 18/7/2016 this court issued a ruling on a further application for review in the following terms:-

“14. The evidence so far is that the 1st accused was a very influential police officer at his work station and that there were some investigations at Nakumatt which someone wanted to be stopped as per the email received through the evidence of PW9.

15. It is therefore in the best interest that the accused persons continue to be in remand custody during their trial to protect the prosecution process against probable hindrance or interference by the accused persons noting that the evidence so far presented by the prosecution before the court shows that the police are still investigating the source of the threatening emails sent to the staff of Nakumatt Holdings immediately the deceased was shot dead and if the accused persons are released at this stage there is a real likelihood of their presence even though they are at this stage considered innocent inflicting real fear and intimidation on the remaining witnesses.”

3. Despite the court ruling herein above the applicants once again filed the following applications for review:-

a) **EZEKIEL MOMANYI ONSONGO** Application dated 19th October, 2017 and filed on 23rd October, 2017 in which it was stated that it will take a long time to conclude the trial herein. It was stated in support that all the protected witnesses had testified and the prosecution had secured their evidence through production of exhibits in court and therefore there was no possibility of the applicant interfering with the evidence.

b) **DENIS MOSE MAROKO** application dated and filed on 15/11/2017 in which it was deponed that a pre-bail report had been filed on him and further that key witnesses had testified thereby making him entitled to review the order denying him bail. He further stated that none of the witnesses had adduced any cogent evidence against him.

c) **PHILLIP MANYURA MAROKO** filed an application on 27th September, 2016 in which it was deponed that there was no single witness who had implicated him either in court or in committal witness documents and therefore believed that he was being victimized and punished unfairly by keeping him in remand prison. It was stated further that his health had deteriorated and his family continued to suffer while he is in detention.

4. In response to the said applications the prosecution filed a replying affidavit through **PC JULIUS KIEMA** in which he deponed that the 2nd accused person disappeared from Nairobi after the fatal incident and was only lured through the use of an informer. It was deponed that there was sufficient evidence on record to indicate and or demonstrate that at the material time of the fatal incident the accused was in the company of the 1st accused person and knowing that this fact has and is to be established there is a high likelihood of the same absconding.

5. The 1st and 3rd accused persons filed written submissions in which on behalf of the 1st accused it was submitted that the protected witnesses and those profiled to be of high risk of being interfered with had since testified and their evidence was on record. It was submitted further that the applicant was married with a wife and three children who resides in Kitale since his arrest and was therefore not a flight risk.

6. On behalf of the 3rd accused it was submitted of the nineteen (19) witnesses who had so far testified none had implicated the applicant. It was submitted that all the witnesses who were staff of Nakumatt where both the deceased and the 3rd accused worked had given evidence in court and none had mentioned the 3rd accused. It was submitted that no allegation of interference with any witness had been made against the 3rd accused. It was stated further that the 3rd accused was undertaking a PhD course which had to be cut short because of the arrest and detention despite the fact that he had invested money, time and energy on it and further that the same had a serious medical problem and his continued incarceration only adds to his pain and punishment before conviction.

7. On behalf of the prosecution it was submitted that the trial was at the tail end which is likely to be concluded at the next hearing dates and therefore the matter should be determined once and for all.

8. On behalf of the 2nd accused a pre-bail report dated 20th September, 2017 was submitted that the same was married at the time of the commission of the offence but that the wife had deserted the matrimonial home with their son. On the victim impact statement it was stated that the probation officer was unable to physically interview the wife of the victim and that the victim's family was not known to the 2nd accused.

DETERMINATION

9. For record purposes I must state that the court had directed that any further applications for review be heard by Justice Lesiit who had issued the initial order but the Judge directed that since this court had heard prosecution witnesses it was better placed to consider the application for review.

10. I have set out my earlier reasons for declining to review the order herein and take the view that nothing has changed since that order was issued. I have further noted that this matter now has hearing dates for 25th and 26th April, 2018 and 2nd of May, 2018 when the Prosecution is likely to close their case and will at this stage decline to review the order issued herein denying the applicants bail based on the fact that the prosecution case is at the tail end and the applicants shall suffer no prejudice should they remain in custody pending the conclusion of this case.

11. I am unable to find new grounds upon which to grant the order for review and therefore find no merit on the applications herein for review which I hereby dismiss.

DATED, SIGNED and DELIVERED at Nairobi this 7th day of March, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Mochere for the 1st accused

Mr. Mochere for Muchiri for the 2nd accused

Mr. Munyendo for Mr. Ogada for the 3rd accused

All Accused persons - present

Court clerk Tabitha/Karwitha