



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 95 OF 2013

REPUBLICRESPONDENT

VERSUS

DANIEL MUSYOKI MWANGANGI1ST ACCUSED

JOHN MUTHAMA MWANGANGI.....2ND ACCUSED

RULING

BACKGROUND

1. The applicants **DANIEL MUSYOKI MWANGANGI** and **JOHN MUTHAMA MWANGANGI** were charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code the particulars of which were that on 26th day of August, 2013 at Huruma-Ngei-II in Nairobi District within Nairobi county murdered MWANZIA MULANDI. They both pleaded not guilty.
2. By an application dated 3rd December, 2014 the 1st accused person DANIEL MUSYOKI MWANGANGI applied to be released on bond pending trial and on 11/11/2015 Justice Ombija as he then was declined to allow the application until at least four (4) key prosecution witnesses have testified.
3. By a notice of motion dated 28/10/2015 the 2nd accused person JOHN MUTHAMA MWANGU moved the court to be released on bond/bail pending trial which application was supported by the annexed affidavit sworn on the same day in which it was deponed that the same was arrested around the second week of August 2015 for a crime that was allegedly committed in the year 2013 for which he had not been questioned and that the intended prosecution witnesses were not known to himself since he had not been served with committal bundles and undertook not to interfere with any of them.
4. It was further deponed that he had been aware of the circumstances that gave rise to the charges herein since August 2013 and he had never done anything nor intended to do anything that may interfere with the just conclusion of the matter and further that he was not a flight risk.
5. In opposition to the said application the state filed a replying affidavit sworn by PC AYUB LWAMBA in which it was deponed that the applicant and his brother attacked the deceased publicly in front of witnesses and called their friends who joined them in attacking the deceased who was left lying unconscious on the floor and that the accused who was at large was arrested when his wife, one EUNICE MWENDA MUTHAMA, made a report on 29th July, 2015 that the applicant had gone to their house and threatened her with a knife.

6. It was deponed that there was a real apprehension of the accused interfering with the prosecution witnesses who still work and reside in the same area in Huruma and that the applicant by his conduct in threatening his wife demonstrated that he is a danger to the witnesses in the case and will interfere with the administration of justice.

7. The applicant filed a further affidavit in which it was deponed that he separated with his former wife in the year 2013 long before the alleged event giving rise to the charge herein and that all along he had been working along Juja road as a conductor on various public service vehicles before and after his brother was arrested and was never at large.

8. To assist the court in reaching a just determination herein and in compliance with the provisions of the Victim Protection Act and Bond/Bail Policy Guidelines the court ordered for pre-bail reports on both the accused persons in which it was reported as follows:-

I. 1st accused DANIEL MUSYOKI MWANGANGI, eighth born son of the late Lois Wanja and Joseph Mwangi who is sickly after suffering stroke. The victims brother expressed reservation on the release of the accused since they feared that they might be flight risk. It was stated that the accused had promised not to interfere with witnesses having been in custody since 2013.

II. Second accused JOHN MUTHAMA MWANGANGI Born in 1988 and joined Matatu Industry in 2011 as a tout. His sister was willing to stand surety for him.

DETERMINATION

9. I must point out that there is a determination already made in this matter by Justice Ombija to the effect that the 1st accused person may be released on bond after four (4) key prosecution witnesses have testified. At the time of this Ruling the said witnesses had not testified and therefore I find and hold that the said circumstances have not changed.

10. By reason of the said Ruling I hereby decline to allow the application herein and order that the accused person continue being in custody until the four key prosecution witnesses have testified after which they will be at liberty to renew their bail application.

11. Taking into account the fact that the first accused has been in custody since 2013 I hereby order that this matter be fixed for hearing on priority basis on a daily basis until the evidence of the four (4) key prosecution witnesses have been taken.

DATED, DELIVERED and SIGNED at Nairobi this 5th day of July, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Magoma for the State

Mr. Ruiru for Mr. Nyamongo for the 1st accused

Mr. Ruiru for the 2nd accused

Accused present

Tabitha court clerk