



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL (MURDER) CASE NO. 59 OF 2013

REPUBLICPROSECUTOR

VERSUS

MARK MUCHIKA.....ACCUSED

RULING

Introduction

1. The accused person herein is on trial for murder contrary to Section 203 as read with Section 204 of the Penal Code. On 16.12.2013, he was admitted to bond of kshs.one million with one surety of a like amount. Hearing is yet to commence because Mr. C.O Samba who appears for the accused was absent when the case came up for hearing on 19.09.2016.

Submissions

2. On that same day, the prosecution informed the court that the accused was threatening some of the prosecution witnesses and sought to have the bond granted to the accused person cancelled. Arguments on the prosecution's application were made before me on 28.09.2016.

3. Mr. Shivega who held brief for Mr. Samba opposed the application on grounds that the application was not supported by any affidavit and further that the application was made in bad faith and intended only to bring the accused person's juggery business to its knees. Mr. Ng'etich had told the court that the accused is facing a criminal case of creating disturbance at the Principal Magistrate's Court at Butali as a result of the threats to some of the witnesses in this case. Mr. Ng'etich also dismissed as lacking merit the contention by Mr. Shivega that the prosecution's application to cancel bond granted to the accused person was made in bad faith. Mr. Shivega contended that there were no compelling reasons to warrant cancellation of the bond.

Analysis and Determination

4. I have carefully considered the submissions by both Counsel in this matter. I have also carefully considered the guidelines on bail and bond. I note that threats to witnesses is one of the parameters to be taken into account when considering any application for bail/bond and I am of the considered view that it also applies when considering whether or not to cancel bail/bond.

5. In the instant case, I am satisfied that the allegations of threats to witnesses is a compelling reason why bail/bond should not be granted and/or cancelled. This court saw one of the witnesses whose life was said to be threatened by the accused. The witness appeared visibly shaken. I do not find any merit in the accused person's allegations that the instant application is made out of malice. The accused person did not

establish a nexus between the complaint made against him, the witnesses and his business so as to impute malice. Details of the witnesses who are threatened have been furnished to the court.

Conclusion

6. In the result, I cancel the bond granted to the accused person on 16.12.2013. The accused may apply for review of this order once the outcome in Butali SRM Cr. Case No. 2019 of 2015 is made known.

Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 6th day of October 2016

RUTH N. SITATI

JUDGE

In the Presence of:-

.....Mr. Ng'etich (present).....for State

.....Mr. Getanda for Shivenga (present).....for Accused

.....Mr. Okoiti.....Court Assistant.