



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
HIGH COURT CRIMINAL CASE NO. 59 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

MARK MUCHIKA.....ACCUSED

R U L I N G

Introduction

1. The accused's bond herein issued on 16.12.2013 was cancelled by this court vide its ruling dated 06.10.2016. By the Notice of Motion dated 12.10.2016, the accused person through his advocate seeks for a review and/or setting aside of the orders dated 06.10.2016 and all other consequential orders.
2. He also seeks to be readmitted to bond on the same terms as were previously issued to him on the 16.12.2013.
3. The application is premised on the grounds set out on the face thereof the application and is supported by the annexed affidavit of the accused sworn on the same date.
4. The accused claims to have discovered new and important evidence that was not availed to the court when the application for cancellation of bond was heard and determined.
5. He explained in detail this alleged discovery in his affidavit in support of the application which has also been emphasized by his advocate M/S Shivega in his submissions before this court made on 30.11.2016.
6. Mr. Oroni from the O.D.P.P does not oppose the application.

Determination

7. This court has considered the application for review as made by the accused and the submissions made by both applicant's and prosecution counsel.
8. This court had earlier asked the prosecution to investigate the allegations made by Sussy Munyi Shiundu. They were to file an affidavit by the investigating officer Kabras Police Station informing this Court of the investigations so far done with regard to the allegations by the prosecution. No report has been presented before this court although it is clear the defence counsel went ahead and has made this court aware of the Criminal Case No. 1116 of 2016 at Butali Court where accused herein is charged with the offence of creating disturbance in a manner likely to cause a breach of the peace. The particulars of

the said case are clear that the accused person appeared to Sussy Munyi Shiundu and her grandchild while armed with a panga.

9. There are two other cases which the prosecution had earlier referred to namely Butali Criminal Case No. 727/2015 and Butali Criminal Case No. 2019/2015 whose details they did not supply to this court.

10. Even though the prosecution has failed on their part in investigating the allegations made against the accused, this court notes that Susy was threatened by the accused and she made a report and the accused was arraigned in court in Butali Criminal Case 1116/2016 and is now out on bond pending the hearing and determination of the case. Since the case is in court at Butali the same is sub judice and will not be an issue of discussion by this court.

11. It remains therefore that the defence have shown that there is a case pending at Butali which involves the accused. The case is not new as the defence would want this court to believe because the charge sheet was prepared on 20.09.2016, arguments to cancel the accused's bond were made on 19.09.2016 and Sussy wrote her statement at Kabras Police Station on the 14.07.2016 of the threats made to her by the accused herein.

12. When considering applications for bail or bond, the court considers such factors as the safety of both accused and the victim as well as victim's families, and any threats to witnesses is a compelling reason why bail/bond may be refused.

13. In the circumstances of this case however, the prosecution does not oppose reinstatement of accused's bond, perhaps because they gave wrong information to the court in the first place concerning the cases pending at the Butali SRM'S Court. For this reason, this court shall reinstate the accused's bond terms as granted to him on 16.12.2013, but with a very stern warning that should any other complaint be made to this court, concerning any threats by the accused person to any member of the victim's family, the bond herein reinstated shall be cancelled until the case is heard and determined.

Orders accordingly

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

RUTH N. SITATI

JUDGE

In the presence of;-

...Mr. Shivega (present).....for Accused

...Mr. Ngetich(present).....for state

...Mr. Polycarp Mukabwa.....Court Assistant