



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 50 OF 2012
DANCUN LIVINGSTONE KIMANTHI.....1ST APPLICANT
WINNIE WAIRIMU KARIUKI.....2ND APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

The two applications before me seek a review of the ruling of this court delivered on 22nd August 2013. In the ruling I disallowed the application for review of bail in respect of the two accused **Dancun Livingstone Kimathi** and **Winnie Wairimu Kariuki** respectively.

There were four reasons why I disallowed the application. Firstly, I was persuaded that the release of the applicants would instill fear in the witnesses particularly those who were colleagues of the 1st accused at the U.S.I.U; that the applicants were likely to interfere with witnesses; and, that the accused who were facing two capital offences were likely to abscond and not attend trial.

At the hearing of the present review application on 22nd January 2014 I heard submissions from learned counsel **Mr. Bowry** and **Mr. Kaingu** respectively for the 1st and 2nd accused.

Both counsel urged the court to take judicial notice in the delay in hearing the case. They respectively submitted that the applicants have been in custody for long and the trial had not even commenced. The long delay, they submitted, was prejudicial to the accused. They referred me to the case of **Kimani V. Republic Criminal Application No. 576 of 1990** in which **Mbaluto J.** (as he then was) granted bail in consideration of delay in trying the case.

In opposing submissions, **Mr. Karuri**, the learned prosecuting counsel referred the court to the averments in the Replying affidavit filed earlier by the State and the court's own ruling which dismissed the earlier application. In particular, he submitted that the vulnerable witnesses were yet to testify and that the applicants were unlikely to attend trial owing to the fact that they were facing two capital charges.

I have carefully considered this review application. The only new issue raised in this application is the delay in trying the accused. It is the applicant's view that it is unfair to be held in custody when it is likely that the case will not proceed expeditiously.

As suggested by the applicants' counsel, I have taken judicial notice of the fact that the trial in this case is

yet to start. Delay however cannot be the only consideration as to whether or not bail can be granted. If it were, then every accused person would automatically be granted bail owing to the current limited number of judicial officers *vis-a-vis* the high number of cases to be tried which necessarily contributes to delay in most cases. For delay to be considered a critical factor, it must be demonstrated that it is both unreasonable and intentional. Further, there must be no other compelling reason to warrant an applicant being denied bail.

In this particular case, I have reviewed all the reasons why bail was previously denied. The applicants were denied bail because I held the view that they were likely to abscond owing to the multiple capital charges they face; and, that they were likely to interfere with prosecution witnesses. I explained then and in depth the reasons for arriving at that decision. It has not been demonstrated in the review application that there exist any new circumstances with respect to the pending capital charges and the witnesses who are yet to testify.

On the issue of delay, I note that the matter now is scheduled for trial on 26th - 29th May 2014. I direct that the prosecution presents all its witnesses for the trial to proceed expeditiously.

The review applications are dismissed.

Ruling delivered and signed at Nairobi this **11th** day of **March**, 2014

R.LAGAT-KORIR

JUDGE

In the presence of:-

..... :Court clerk

..... :1st Applicant

..... :2nd Applicant

..... :Counsel for the 1st Applicant

..... :Counsel for the 2nd Applicant

..... :Counsel for the Respondent