



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 23 OF 2014**

REPUBLIC..... PROSECUTOR

VERSUS

1. DIANA SALIM SULEIMAN
2. MAHADI SWALEH MAHADI

alias JESUS.....ACCUSED PERSONS

**RULING**

This is a renewal of a bond application for the Accused persons following the rejection of another bond application in my ruling rendered on 30th July, 2014. The first Accused had initially been granted bond by my Brother Mureithi Judge but same was later withdrawn by the same Judge.

The grounds for the renewal of bond are that since the rejection off the applications for bond this matter has substantially been heard and the remaining Witnesses will significantly relate only to issues of identification of the victims bodies.

Further that the evidence adduced so far does not touch on the Accused persons guilt.

That measures to protect the Witnesses so that they are not interferer with and their security is not threatened have already been undertaken when the Court made orders to the effect photographs of the Witnesses not to be taken during trial.

That the statements of the Witnesses be redacted.

That the nineteen (19) Witness be placed under the Witness Protection Programme.

It is further contended that the security situation in Lamu is now near normalcy and there is a curfew already in place.

Counsel has heavily relied on the case of **Aboud Rogo Mohamed & Another -Vs- Republic** Criminal case No. 793 of 2010.

In that case the Accused persons were charged with the offence of engaging in an organized Criminal activity contrary to section 3(3) as read with Section 4(1) of the prevention of organized crimes Act 2010.

Particulars being that they had engaged in an organized criminal activity by being members of Al-Shabaab an outlawed organized criminal group as per Gazette Notice No. CX-11-No. 113 of 3rd November, 2010.

This application is opposed on the grounds that the applicant has not clearly demonstrated that the circumstances on the ground have changed. Mr. Muteti for the Respondents places reliance on the affidavit sworn by No. 219776 SP Jeremia Kinga and in particular paragraph 7 wherein the investigating officer depones that some of the protected Witnesses in this case “WC”, WB”, and “WG” have expressed fear for their security in that every time they travel to Mombasa to testify in this case, persons believed to be associates of the Accused, have questioned them of their whereabouts and called them traitors. Further that some people from Kaisari village have been trying to find out the identities of the Witnesses.

That if the Accused persons are released on bond they would abscond, because of the severity of punishment if found guilty.

Counsel gave an attempt to distinguish the case of Republic -Vs- Danson Mgunya & Another Criminal case No. 26 of 2008 from the present one by arguing that the Magunya case involved two Government Civil Servants who were charged with murder and who were arrested two (2) years after the commission of the offence.

Counsel for the respondent submits that there is still insecurity in Lamu.

In my ruling delivered on 30th July, 2014 I did reject the 2nd Accused application for bond after finding that the prosecution had proved that there were compelling reasons to deny the Accused bond. I did indicate, however, that the rejection of the bond application was as of that time and space.

This rider was added as a result of the realization that circumstances do change in the course of the hearing history of a case. My Brother Mureithi Judge while reviewing the bond application in respect of the 1st accused did also indicate that the denial of bond for the accused Number 1 was as of that time only.

The two Accused persons are now renewing their bond applications.

Are there changed circumstances to Warrant the renewal of the bond applications?

After the Court rejected the 2nd Accused application for bond, it did make orders to the effect that the case be heard on priority basis. So far the court has heard nine (9) Witnesses. This is not the opportune time to comment on the evidence so far adduced but the court has certainly gotten the “feel” of the case.

Since the delivery of the ruling nineteen (19) Witnesses have been placed under the Witness Protection Programme.

These are some of the Witnesses that the investigating officer in his affidavit depones that they have expressed fear for their security.

Upon application by Counsel for the Respondent the Court has made orders that photographs of the Witnesses should not be taken while testifying in Court.

The Court has made orders to the effect that the statements of the 19 Witnesses placed under the Witness Protection Programme be redacted so as to exclude their personal particulars.

The court has so made orders that the evidence of the nineteen (19) Witness under the programme be heard in closed session (in camera).

All these measures have been put in place to ensure that the Witnesses are not interfered with and their security threats and fears allayed.

When viewed broadly, the security situation in Lamu is not as it was some four (4) months ago. The deployment of Kenya Defence Forces has borne much fruit. It is trite law that the paramount consideration on bail application is whether the Accused will turn up for his trial.

At paragraph 9 of the Affidavit sworn by SP Jeremiah Kinga he depones that if released on bond the Accused may fail to appear in Court given the gravity of the offence and punishment attached thereto upon Conviction.

It is noted that the offences of murder the Accused persons are charged with took place between the 15th and 17th day of June, 2014. The first Accused was arraigned in Court on the 2nd day of July, 2014 and the 2nd Accused on 9th July, 2014. There are no allegations that they had attempted to file so as to escape arrest.

I do find that circumstances on the ground have changed and there is need to review the issue of bond for the Accused persons. I find their application has merit and its allowed. The two Accused persons are admitted to bail but on the following stringent terms.

Each may be released on a bond of Kshs. 10,000,000/= (ten million) with two sureties of similar amount.

Each Accused person will be reporting to the OCS of the nearest Police Station to his residence fortnightly (within two (2) weeks) on Thursdays.

They will not travel outside the jurisdiction of this court without prior application and permission.

Ruling delivered dated and signed in open Court this **10th** day of **November, 2014**.

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**M. MUYA**

**JUDGE**

**10TH NOVEMBER, 2014**

**In the presence of:-**

Learned Counsel for the Respondent Mr. Masila

Learned Counsels for applicants Mr. Taib and Olaba Advocates

The applicants present

Court clerk Musundi

**M. MUYA – JUDGE**

**Court:**

Certified copies of the ruling to be served on the parties.

**MUYA – JUDGE**

**Court:**

The Director of Public Prosecution to furnish the Defence with the original statements of the Witnesses.

**M. MUYA - JUDGE**

**Court:**

Mention on **21st November, 2014** for fixing of hearing date.

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**M. MUYA**

**JUDGE**

**10TH NOVEMBER, 2014**