



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL CASE NO. 25 OF 2012**

REPUBLIC.....RESPONDENT

VERSUS

SAMUEL ADONGO ACHOLA.....1<sup>ST</sup> APPLICANT

CORNELIUS OMBAGI NYABERA .....2<sup>ND</sup> APPLICANT

**RULING**

**Samuel Adongo Achola** and **Cornelius Ombagi Nyabera** are facing trial for the murder of **John Mwangi**. According to the information filed against them, they committed the offence on 1<sup>st</sup> April 2012 at Kayole Estate in Nairobi.

They were arraigned in court on 13<sup>th</sup> April 2012 and their trial commenced on 14<sup>th</sup> June 2012. However, the trial had to commence *de novo* after 3 witnesses had testified when the present court took over the trial. So far only one witness has testified.

The accused have now applied to be released on bail pending the conclusion of their on-going trial. They state in their respective applications dated 2<sup>nd</sup> May 2013 and 10<sup>th</sup> June 2013 that they will attend court for their trial and shall not interfere with prosecution witnesses. The 1<sup>st</sup> applicant specifically states in his supporting affidavit that the eye witnesses who witnessed the incident have now testified and therefore there were no further compelling reasons for him to be denied bail.

I have considered the rival affidavits and the oral submissions by respective counsel tendered in court on 8<sup>th</sup> October 2013. It is the 1<sup>st</sup> applicant's view that there are no compelling reasons to deny him bail. His contention is that the reasons which had made the court dismiss his earlier application no longer exist. He states that he can no longer interfere with witnesses because the said witnesses have already testified and that in any case the State has sufficient mechanisms to prevent and deal with interference with witnesses. For the 2<sup>nd</sup> accused, it is his argument that this being his first application, the reasons advanced by the court in rejecting the 1<sup>st</sup> applicant's earlier application do not apply. It is his further argument that the witnesses had relocated as stated by the prosecution and that therefore there was no chance of interference.

In considering this application, I observe that the 1<sup>st</sup> applicant's application was rejected by the court

( **Ombija J.**) vide a Ruling dated 5<sup>th</sup> June 2012 for the reasons that the accused was likely to intimidate the witnesses and was also likely to abscond. The court however stated that the accused would be at liberty to renew his application once the witnesses who were his neighbours had duly completed their testimony.

From the record, it appears that the key witnesses had testified as of 13<sup>th</sup> November 2012. However on 13<sup>th</sup> June 2013, when the matter came up for directions, it was directed that the matter starts de novo. So far only one prosecution witness has testified. This therefore means that not all the key witnesses have testified. I find it necessary to take the evidence of the key witnesses and particularly that of the minor witness who the prosecution states was an eye witness before the accused can be granted bail.

In the premises, I am disinclined to grant the applicants bail at this stage. Their respective applications are dismissed.

**Ruling delivered, dated and signed at Nairobi this 7<sup>th</sup> day of November, 2013**

**R. LAGAT - KORIR**

**JUDGE**

**In the presence of:**

- .....: **Court clerk**
- .....: **1<sup>st</sup> Applicant**
- .....: **2<sup>nd</sup> Applicant**
- .....: **For the 1<sup>st</sup> applicant**
- .....: **For the 2<sup>nd</sup> applicant**
- .....: **For the State/respondent**