



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**HIGH COURT CRIMINAL CASE NO. 1 OF 2018**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**JOHN MUTINDA NZAU.....APPLICANT**

**RULING**

1. The accused herein John Mutinda Nzau has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the 23<sup>rd</sup> day of December, 2017 at Usiumu village, Mumbuni sub location in Kathiani Sub County within Machakos County murdered Maureen Waiyu.

2. The accused denied the charges herein and has prayed to be released on bond pending the trial. He has filed an affidavit sworn 31<sup>st</sup> May, 2018 and annexed an affidavit sworn by his mother Mwikali Nzau as well as a statement by his daughter Elyzabeth Mutinda who are key witnesses set to be called by the State. The matters averred inter alia are; that he has co-operated with the investigations and he has no intention to hinder or thwart their investigations; that he has a permanent place of abode at Usimumu village in Mitaboni; that he is a law abiding person of good morals; that he binds himself to attend court whenever required and will not interfere with the progress of this matter; that his children who are underage require him to take care of their upkeep and welfare; that the two witnesses who are his mother and daughter have vouched for his release on bond.

3. The request for bond has been opposed by the State. The investigating officer herein No. 81628 Corporal Binti Hamadi has sworn an affidavit dated 12<sup>th</sup> April, 2018 in which she deposed inter alia; that two of the crucial witnesses are family members (mother, Annah Mwikali and daughter- Elyzabeth Mutinda) who used to live with the accused prior to the commission of the offence and there is thus likelihood that he may interfere with them if released on bond before they testify and which is a compelling reason for denial of bond at this stage. That the accused stands to be sentenced to death in the event of a conviction and which is an incentive for him to abscond; that the grant of bail is not absolute but a matter of discretion on the part of the court.

4. Article 49 (1) (h) of the Constitution of Kenya provides that:

***“An accused person has the right to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”***

5. What falls for this court’s determination therefore is whether or not the accused will attend court during trial and secondly, whether or not the accused will interfere with the witnesses or threaten them. It is an undisputed fact that the two key witnesses, the accused’s mother and daughter live with the accused being their sole provider. Under such circumstances, there is a likelihood that the two are at the accused’s mercy and is likely to influence them. In the circumstances, this court is reluctant to grant bail at this stage. In the end I make the following orders:

***a) The application herein is dismissed.***

***b) The two witnesses to testify first after which the accused shall be at liberty to renew his application for bail.***

Orders accordingly.

**Dated and delivered at Machakos this 25<sup>th</sup> day of July, 2018.**

**D.K.KEMEI**

**JUDGE**

**In the presence of:-**

Machogu - for the Respondent

J. N. Kimeu for Makundi for the Applicant

Josephine - Court Assistant