



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO. 76 OF 2015

REPUBLIC

VERSUS

SAMUEL NGUNGA KIILU ACCUSED/APPLICANT

RULING

INTRODUCTION

1. This is a ruling on an application for bail pending trial. The applicant faces a charge of murder contrary to section 203 as read with section 204 of the Penal Code by Information dated 30th September 2015.
2. The Respondent has filed a replying affidavit sworn by Inspector Emmanuel Kenga, the Investigating Officer, whose principal objection to the bail application is set out at paragraph 5 of the Affidavit - *“that all the prosecution witnesses and the applicant are members of the same clan, they are neighbours and resided from the same locality and there is therefore high possibility of the witnesses being inflicted fear when they come into contact with the applicant who knows the kind of evidence they will tender against him.”* (sic)

DETERMINATION

3. I have considered the application and the oral submissions by counsel for the parties, Ms. Thiong’o for the accused and Mr. Machogu for the respondent. As I ruled in *Republic v. John Bosco Kyalo & 2 Ors. Machakos HC Criminal Case No. 31 of 2015*,

“I agree that the interference or likelihood of interference with witness may be a compelling reason for denial of bail in the given circumstances of the particular case. However, the interference or likelihood of interference must be proved by cogent evidence and mere speculation that the accused may, having seen the statements recorded by witnesses, contact the witnesses and attempt interference would not suffice. The prosecution must show a relationship between of the accused and the witness, or other circumstances, clearly presenting opportunity for the accused to exercise control over or influence the witness into withholding or distorting his testimony or failing to adduce material evidence before the court, rather than the mere hailing from the same area.

Evidence on circumstances making it conducive to a real likelihood of interference must be demonstrated.”

See also Machakos HC Criminal Case NO. 44 of 2015, *Republic v. Gerald Mutuku Nyalita & 2 Ors.*

4. In the present case, no evidence of special relationship between the witnesses and the accused or circumstances other than the hailing from the same clan and geographical area was adduced to support a finding of real likelihood of interference by the accused with the witnesses. The Prosecution did not demonstrate impossibility or, at least, difficulties in placing under the Witness Protection Programme the witnesses whose interference is alleged, so as to present a compelling reason for refusal of bail as a restriction of the right to bail under Bill of Rights of the Constitution of Kenya, 2010.

CONCLUSION

5. I, therefore, do not find that there is proved any real likelihood of interference with witnesses such as would be a compelling reason for the refusal of bail in this case. If the Prosecution considers such possibility, it is at liberty to place the witnesses under witness protection programme in accordance with the law. For that purpose, the court will stay the release of the accused persons on bail for a period of 14 days to allow time for the Prosecution to take such measures for the protection of witnesses as may be necessary.

ORDERS

6. Upon expiry of such period of 14 days the accused person will be placed on bail upon terms as follows:

1. **The accused will execute a bond for his attendance in court for his trial for the sum of Ksh.500,000, with two (2) sureties of the same amount.**
2. **The accused will every 30 days attend the Officer Commanding Police Station within whose jurisdiction falls the area Lambati village, Mukaa Sub-location of Makueni County where the incident the subject of the charge herein is alleged to have occurred.**

DATED AND DELIVERED THIS 6TH DAY OF JANUARY 2016.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Accused present

Mr. Machogu for the Respondent

Mr. Ndola- Court Assistant.