



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE NO. 50 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN MAUNDU.....ACCUSED**

**RULING ON BAIL**

1. The applicant who is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code seeks bail pending trial by a Notice of Motion dated 29<sup>th</sup> October 2015. The applicant asserts his constitutional right to bail and in supporting his application states that he is the sole breadwinner in his family and therefore solely responsible for the upkeep of his elderly parents and undertakes to abide by reasonable conditions of bail that the court may impose in the circumstance of the case.

2. In reply to the application for bail, the State has through an affidavit by the Investigating Officer PC Cyrus Karema filed a Replying Affidavit opposing the grant of bail on grounds set out at paragraphs 5-9 as follows:

*5. That investigations were instituted and upon conclusion there was sufficient evidence to connect the applicant/accused with the offence of murder and charges were filed.*

*6. That the prosecution has supplied the applicant/accused with relevant statement as required indicating the witnesses' particulars.*

*7. That some of the prosecution witnesses and the applicant/accused are persons who were neighbours, and they resided within the same locality and there is therefore high possibility of the witnesses being inflicted fear when they come into contact with the applicant/accused who knows the kind of evidence they will tender against him.*

*8. That the accused person if convicted upon trial would suffer the sentence of death.*

*9. That considering the nature and seriousness of the offence and the foregoing reason, this Honourable Court should find that there are compelling reasons to have the applicant/accused denied bail."*

3. The State should only prosecute a suspect where there is sufficient evidence to connect the accused with the offence. The accused has a right to under Article 50 (2) (j) of the Constitution "to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that

evidence;” and compliance with such constitutional duty cannot be a ground to justify refusal of the constitutional right to bail.

4. Bail is available for all criminal offences and the seriousness of the offence and likely sentence of death of their own cannot be compelling reasons to deny an accused person his constitutional right to bail. A real likelihood of the accused absconding must be demonstrated rather than speculation based on the serious of the offence and severity of the likely sentence.

5. Likelihood to interfere with witnesses may be a compelling witness if it is demonstrated that in view of the relationship or circumstances of the accused *vis a vis* the prosecution witnesses, there is a real probability of the accused interfering with the witnesses so that they do not attend the trial or if they do, testify in a manner hostile to the prosecution’s case, thereby impairing the State’s ability to successfully carry out the prosecution of case. In such circumstances details of the relationship and the circumstances in which it is alleged that the accused will more likely than not interfere with the witnesses.

6. I recently had occasion to consider the issue of likelihood to interfere with witnesses as a ground for refusal for bail in **Republic v. John Bosco Kyalo & 2 Ors.** Machakos HC Criminal Case No. 31 of 2015, as follows:

*“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 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.”*

7. In this case, no such relationship or circumstances are shown, other than the mere statement that the witnesses are ‘neighbours and they reside in the same locality’ with the accused. I do not find any compelling reasons for refusal of bail pending trial in that regard.

8. Accordingly, for the reasons set out above, the court admits the accused to bail pending trial upon terms as follows:

- a. The accused will execute a bond for his attendance to court for the trial of his charge in the sum of ksh.500,000/-.
- b. The accused will supply two sureties for his attendance in court in same sum of Ksh.500,000/-.
- c. The accused shall every 30 days attend the Officer Commanding Police Station for the area, Ngaamba Location in Mukaa District of Makueni County, in the local jurisdiction of which it is alleged to have occurred the incident from which the present criminal charges arose.
- d. As further term of bail, the accused will not make any contact with the prosecution’s witnesses and the prosecution is at liberty to move the court for review of the bail should the accused attempt to interfere with the witnesses while out on bond.

9. The matter will proceed to hearing as scheduled on the 23<sup>rd</sup> February 2016.

**DATED AND DELIVERED THIS 23<sup>RD</sup> OF FEBRUARY 2016.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of: -

Mr. J.N. Kimeu for the Applicant

Mr. Machogu for the Respondent

Ms. Doreen- Court Assistant.