



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**HIGH COURT CRIMINAL CASE NO 101 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PATRICK THURANIRA KIMONYE.....ACCUSED**

**RULING**

1. The accused faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of which are that on 7<sup>th</sup> day of November, 2014 at 2140hrs at Globe roundabout within Nairobi murdered FELIX NGAYWA MAGOMERE and DENNIS ONGWAE NYAGENA. On 9/12/2015 he pleaded not guilty to the said charges.
2. On 23<sup>rd</sup> November, 2015 the accused filed a Notice of Motion application under certificate of urgency in which he sought to be released on bail pending trial on the ground released on bail pending trial on the ground that at the time of the alleged offence he being a police officer was performing his duties and had allegedly gone after individuals who were armed and shooting. It was stated that at this stage he is presumed innocent until proven guilty.
3. In response to the said application the State filed a replying affidavit sworn by JAVAS MWORIA an investigator with the Independent Policing Oversight Authority in which it was deponed that the accused on 9/10/2015 filed an application for Judicial Review being JR No.342 of 2015 Nairobi but failed to prosecute the same.
4. It was deponed further that the accused person failed to surrender to the police station resulting in police time being wasted and the course of justice being impaired leading to a warrant of arrest being issued against the same on 11<sup>th</sup> November, 2015. It was further stated that due to the nature and seriousness of the offence the temptation to abscond and the risk of failing to surrender upon conviction is high.
5. When the matter came up for hearing before me, Mrs. Kinyoh appeared for the accused while Miss Wafula appeared for the state. It was submitted on behalf of the accused that bail is now a constitutional right of every accused person and that the court as per Bail and Bond Policy Guidelines ought to consider both the rights and interest of the accused person and the victims family and that if the accused person is employed the court should consider the said employment and preserve the same. It was finally submitted that this court should consider preserving the family ties of the accused by granting the same bond.
6. Miss Wafula on behalf of the state submitted that the accused had declined to present himself to the OCPD Central Police Division and had therefore demonstrated that he is a flight risk. She stated that the rights of the accused person should be balanced with that of the family of the deceased persons who have lost their family members. The court was therefore urged to deny the accused bail.

7. To assist the court in arriving at the just decision herein and in compliance with the provision of Victim Protection Act 2014 which now imposes a duty on the court to ensure that every victim is as far as possible given an opportunity to be heard and to respond before any decision affecting him/her is taken and that their right to have their safety and that of their family considered in determining the conditions of bail and release of offender, on 17/12/15 the court ordered for a social inquiry report thereon which has now been submitted in which it is stated that the families of the victims were still hurting and felt that the accused may interfere with witnesses if granted bail.
8. Bail is now a constitutional right of every accused person and under Article 49(1) (h) of the Constitution of Kenya 2010 can only be denied where there are compelling reasons. At this state it must be noted that the accused person is presumed innocent until proved guilty and therefore the main objective of the court in granting or denying bond is to ensure that the accused person attends his trial.
9. In opposing bail, it has been alleged that the accused is likely to interfere with witnesses but no names have been given of the said witnesses. The conduct of the accused person before his arrest and subsequent court appearance has also been submitted by the state as evidence of the accused being a flight risk.
10. Whereas the state was under duty to provide the particulars of witnesses who are likely to be interfered with, the accused person who is a police officer will be under interdiction during the period of trial and will have plenty of time at his disposal and if he intends might interfere with prosecution witnesses whose statements have been provided to his advocate on record. I have further taken note of the fact that most of the prosecution witnesses are police officers who were or had worked with the accused person and there is a real possibility of the accused person making contact with them during the course of this trial if released on bail.
11. I have further taken judicial notice of an increase in the number of cases involving commission of offences by the members of police force and the safety of the accused person would be best preserved if the same remains in custody until most of the prosecution witnesses who are police officers or close relatives of the deceased have testified.
12. I am therefore satisfied that there are compelling reasons to enable the court deny the accused person bond at this stage. The accused shall therefore remain in custody but is at liberty to apply for review of this order upon commencement of the trial herein.
13. The upshot of this is that the application dated 9/12/2015 is hereby dismissed.

DATED, DELIVERED and SIGNED at Nairobi this 23<sup>rd</sup> day of February, 2016.

**J. WAKIAGA**

**JUDGE**

**In the presence of**

*Mr. Magoma for the state*

*Mr. Manyara and Mr. Osoro for the accused*

*Miss Wesonga holding brief for the family of the deceased*

*Accused present*

*Tabitha court clerk*