



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL CASE NO. 14 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOB ABUGA.....ACCUSED**

**RULING**

Job Abuga (the accused) is charged with the murder of Nancy Wanza contrary to section 203 read with section 204 of the Penal Code. The said murder is said to have been committed on the night of 2<sup>nd</sup> and 3<sup>rd</sup> of January 2016 at Umoja 1 Estate within Nairobi County.

The plea was taken on 16<sup>th</sup> February 2016 and the accused pleaded not guilty. He has filed a Notice of Motion dated 16<sup>th</sup> February 2016, through his counsel Mr. Nyaberi, seeking to be admitted to bail pending the hearing and determination of this case. The application is supported by an affidavit sworn by the accused on the same date. On the face of the application and in the supporting affidavit the accused has stated that the deceased was known to him and that they had been dating; that investigations in this case are complete; that he is not a flight risk and he understands the seriousness of this offence and his obligations as an accused person; that he does not have another pending case and that his father is willing and ready to stand surety for him.

The accused further states that he has cooperated with the police in investigations; that there are no compelling reasons to deny him bond; that he has no intentions of interfering with witnesses; that he will reside at Githurai 45 Plot No. 705 at Mwhoko and that he will abide by all the conditions of bail set by the court.

The application was opposed by Ms Nduati for the prosecution. She relied on a replying affidavit sworn by CPL Hesborn Otieno the investigating officer in this case and submitted that the accused is a flight risk because he was attempting to evade arrest; that he is likely to interfere with witnesses namely Brian Olete, William Kivisi who are his close friends and Ann Kadzo who was a mutual friend of the accused and the deceased. Ms Nduati urged the court to decline the application.

In a bail application just like in the main trial, the court must balance the rights of the accused person and those of the victim. Although the law presumes an accused person innocent until evidence is tendered to prove otherwise, this court is alive to the fact that the accused person has been arraigned in court for the offence of murder. The court must assure itself and the victim that the accused person will attend court and answer to the charges he is facing until such time when the court determines he is guilty or he is not guilty. This is why emphasis is laid on the paramount consideration that the accused person will attend court when required to do so until the case is fully determined.

The right to bail is a right that is anchored under the constitution. It is not an absolute right and can be limited where circumstances allow. Circumstances will not allow admission to bail where the prosecution, who has the onus of presenting compelling reasons why the accused should not be released on bond, has presented such compelling reasons. Courts have pronounced themselves on what is and what is not a compelling reason. An accused person being a flight risk and interfering with witnesses are compelling reasons when there is evidence to support the same. Absconding from the jurisdiction of the court means that the accused will not attend court for his trial when required to do so and cannot therefore answer to the charges he is facing. Interfering with witnesses is subverting justice and consequently denying the victim justice. Both are serious and negatively affect the rights of the victim.

Denying the accused bond is interfering with his right to freedom. Law allows the court to limit the accused's right to freedom when there is reason to do so because the court must balance this right against that of the victim and to a larger extent the public in general.

As stated by Mr. Nyaberi in his submissions, the investigations in this case are complete and the bundle of statements of the witnesses compiled. Among those witnesses are the three witnesses named as likely victims of interference by the accused. Other than stating that the accused is likely to interfere with the three witnesses there is no evidence to support those allegations. This court was not presented with any evidence to support these fears. With no such evidence this court is of the view that these fears are unfounded and do not amount to compelling reasons. For this reason I will and do hereby allow this application on the following terms:

- i. **That the accused shall execute a bond of Kenya shillings one million (Kshs 1,000,000) with one suitable surety of the same amount.**
- ii. **In the alternative he shall pay cash bail amount to Kenya shillings five hundred thousand (Kshs 500,000).**
- iii. **He is cautioned against doing anything that might compromise the witnesses, specifically the three witnesses mentioned in this ruling.**

Orders shall issue accordingly.

**Dated, signed and delivered this 17<sup>th</sup> day of March 2016.**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Nduati for the prosecution

Mr. Nyaberi for the accused

Mr. Job Abuga, the accused

Mr. Daniel Ngumbi, court clerk