



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**HIGH COURT CRIMINAL CASE NO. 55 OF 2015**

**REPUBLIC.....STATE**

**-VERSUS-**

**JOASH MARUBE BICHANGA.....ACCUSED**

**RULING**

This is an application for review of the application for bond which application was denied on 31<sup>st</sup> July 2015.

In the earlier application three compelling reasons were advanced why the accused should not be released on bond.

**(i) That the accused will be in contact with the witness. One eye witness, D B M, a minor, was likely to be interfered with.**

**(ii) Due to severity of the sentence, temptation to abscond or go into hiding is very probable.**

**(iii) I have information, believed to be true, that the family of the accused intend to relocate him to an area outside the jurisdiction of this court should he be released on bond.**

The pre-bail assessment report filed on 22<sup>nd</sup> June 2015. From the report, it appears that the release of the accused on bond may endanger the lives of the witnesses and his own life. That the master of ceremony during the funeral expense drive was killed in unclear circumstances, raising fears that all is not well should the accused person be released on bond. Tensions are high, especially from the victim's family as this was double murder of the wife and the daughter.

To the application for review, the prosecution has filed his response in an affidavit sworn on 1<sup>st</sup> March 2016 but filed on 8<sup>th</sup> March 2016.

The deponent, CPL Jonathan Chepkonga, [still] opposes the accused person review of this court's ruling of 31<sup>st</sup> July 2015 denying the accused bond/bail.

He asserts that the circumstances obtaining in the first application are still alive and in particular that the accused's life will be at risk from a hostile community

That the key prosecution witness having testified have laid a strong case against the accused and this may motivate the accused to abscond for fear of being found guilty.

The right to bond/bail is enshrined in article **49 (i) (h)**.....right to be released on bond or bail, on reasonable conditions, pending a charge or trial, **unless there compelling reasons not to be released** .

In the case of **Republic .vs. Lucy Njeri Waweru & 3 Others, Criminal Case no.6 of 2013, F.N. Muchemi J**, the court provided that in considering whether the court would grant bail, the established principles applicable were the following:

- (a)Whether the accused persons were likely to turn up for trial should they be granted bail.**
- (b)Whether the accused person were likely to interfere with witnesses.**
- (c)The nature of the charges**
- (d)The severity of the sentence**
- (e)The security of the accused if released on bond.**
- (f)In case of illness of the accused, the nature and severity of the illness**
- (g)Whether the accused persons have a fixed abode within the jurisdiction**

In conclusion in that case the court held that the accused persons were likely to interfere, influence and intimidate the key witnesses and were also at risk of harm from close family members of the deceased if bail was granted.

The application was thus dismissed.

In **Job Kenyanya Musomi .vs. Republic**

The ruling as per **C.W. Githua J**, defined "a compelling reason in the following terms-

**"A compelling reason would be such a reason that is forcefully convincing to persuade this court to believe that something is true"**

This court is greatly influenced by:

- (a)Whether the accused, if released on bond will likely turn up**
- (b)The nature of the charge, double murder**
- (c)The severity of the sentence, and**
- (d)The security of the accused from the victim family is more than probable.**

Accordingly, this court sees the four above reasons as compelling reasons to deny the accused bond yet again.

Therefore the application for review be and is hereby dismissed.

**Dated at Nyamira this 16<sup>th</sup> day of March 2016.**

**C.B. NAGILLAH**

**JUDGE**

**In the presence of:**

Nyamwange hold brief for Mienda for Accused

Malesi for Respondent

Mercy Court clerk