



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITUI**  
**CRIMINAL CASE NO. 77 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ROBERT ZIPPOR NZILU MULINGE.....ACCUSED**

**R U L I N G**

1. **Robert Mulinge**, the Applicant/Accused is charged with the offence of **Murder**. In his application dated **9<sup>th</sup> February, 2016** he seeks to be released on bail/bond pending trial.
2. the application is supported by grounds that: He stands to suffer prolonged mental breakdown and stress as his trial may take unreasonable time to be heard and determined either on the ground that the trial Judge is away from the station to attend to other official duties, witnesses for Prosecution or exhibits are not available in court; He is not a flight risk; He is a family man who owes duty of care, education and security to his family and other dependants.
3. He swore an affidavit in support of the application where he deposed *inter alia* that he is prepared to abide by any orders that the court may deem fit to grant.
4. In a response thereto the State through the Investigating Officer, **Julius Omari** deponed that the Deceased was the Applicant's wife therefore he could interfere with other family members specifically **Erick Ilako Wambua, Florian Syombai Mwanzia**, his son and sister respectively and witnesses in the matter.
5. Further, he stated that the Applicant issued threats to one **Rodgers Ndulu Nduva** an intended witness and he faces serious charges that attract life imprisonment which would make the Applicant escape.
6. At the hearing **Mr. Konya**, learned defence counsel submitted that the affidavit deponed by **Inspector Omari** could not pass a test of compelling conditions as outlined under **Article 49** of the **Constitution**. No evidence of the alleged threats was provided. Statements of alleged witnesses that the Applicant may interfere with have not been provided which is an infringement of constitutional rights of the Applicant's right to prepare his defence.
7. The learned State Counsel **Ms. Awour**, on the other hand emphasized the fact of likelihood of interference with the Prosecution witnesses. She undertook to ensure all statements are supplied to the Applicant as it may have been an oversight of the Clerical Officer charged with the duty of supplying statements to Applicants.
8. I do note that according to the **Constitution of Kenya 2010**, an Accused person who is presumed innocent until proven guilty has a right to be released on bail unless there are compelling reasons necessitating his incarceration.
9. **Emukule J** in the case of **Republic vs. Dorine Aoko, High Court Criminal Case No. 36 of 2010 (UR)** which is persuasive had this to state in what is envisaged to be compelling reasons:

*“.....To my mind, those compelling reasons are the very same ones spelt out in Section 72(5) of the repealed constitution, and elaborated in Section 323 of the*

*Criminal Procedure Code, namely that the accused person, as the applicant in this case, is charged with the offence of murder, like treason, robbery with violence or attempted robbery with violence, are offences which are not only punishable by death, but are by reason of their gravity (taking away another person's life, disloyalty to the state of one's nationality or grievous assault.....) are offences which are by their reprehensiveness not condoned by the society in general. It would thus hurt not merely society's sense of fairness and justice, and more so, the kin and kith of the victim to see the perpetrator of murder, treason or violent robbery (committed or attempted) walk to the street on bond or bail pending trial. A charge of murder ..... would thus be a compelling reason for not granting an accused person bond or bail.....”*

10. It was therefore the duty of the Prosecution to provide evidence of compelling reasons that required the Applicant to be denied bail. Although it was alleged without proof that the Appellant had threatened some witnesses, what is not denied is the fact that the Deceased was the Applicant's wife and two (2) of their relatives, namely a son, and sister are to testify in the matter as witnesses.
11. In the case of **Mogotsi and Another vs. The State 1990 BLR 142 (HC)** it was stated that one of the factors a court may consider in determining whether or not to release an Accused on bail is for instance the likelihood of the Accused interfering with witnesses.
12. Witnesses mentioned are close blood relatives of both the Deceased and Accused. There may be a likelihood of interfering with them if released on bail and especially so before they testify.
13. In the circumstances, the application for bail is dismissed.
14. It is so ordered.

**Dated, Signed and Delivered at Kitui this 15<sup>th</sup> day of March, 2016.**

**L. N. MUTENDE**

**JUDGE**