



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE NO. 86 OF 2015**

**JOSEPH MATIAS MUTHANYA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant was charged with murder contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on 6<sup>th</sup> February 2015 at Kalembwani market in Mukaa sub-county within Makueni County, with others not before the Court, he murdered Leonard Muasya. The Applicant pleaded not guilty to the offence. The Applicant's counsel subsequently filed an application by way of a Chamber Summons dated 18<sup>th</sup> February 2016 seeking that the Applicant be released on reasonable bail/bond upon such terms and conditions as this Court may deem fair and expedient to impose, pending the hearing and determination of his case.

The Applicant urged his grounds for the application in the said Chamber Summons, and in a supporting affidavit he swore on 18<sup>th</sup> February 2016. The grounds are that the Applicant is under the Constitution presumed innocent till the contrary is proved, and that it is in the interests of justice that his application is granted. Further, that the Applicant will suffer irreparable harm by being held in custody pending the determination of his case. The Applicants deponed that he is a casual labourer, and undertook to avail himself to court whenever required to do so, and to abide with such conditions as the Court may impose. He also pleaded with the Court to impose affordable bail/bond terms, considering the fact that he will wholly rely on the meager earnings of his parents who are peasant farmers to raise the bail/bond.

The Prosecution opposed the Applicant's application in a replying affidavit sworn on 2<sup>nd</sup> March 2016 by Cpl. Fred Wanjala, the investigating officer in this criminal case. The deponent stated that if the Applicant is granted bail/bond, he may interfere with two key witnesses namely Elizabeth Mwende Wambua and Josiah Mutuku Ngunzae, who were at the scene of the incident and who are well known to the Applicant. Further, that the Applicant has been supplied with the witness statements and is aware who will be testifying against him. The prosecution also relied on the bundle of the witness statements which it availed to the Court.

The parties at the hearing of the Applicant's application relied on the pleadings filed. The issue in this application therefore is whether there are compelling reasons why the Applicant should not be released on bail and if so, what are those compelling reasons and who carries the burden of satisfying the court with regard to the existence of such reasons. In **Republic –vs- Danson Ngunya & Another [2010] e KLR**, Makhandia J, (as he then was) stated that if the state wants the accused deprived of his right to be released on bond, then the State must satisfy the court that it would not be in the interest of justice to make an order granting bail/bond.

The Prosecution in this regard has argued that the Applicant may interfere with two witnesses who are alleged to be well known to him. I have perused the witness statements of the two witnesses, namely Elizabeth Mwende Wambua and Josiah Mutuku Ngunzae. The relationship between the Applicant with the two witnesses has not been shown, nor has the influence that the Applicant has over the witnesses so as to be able to interfere with them been established. The mere fact that the Applicant may be known to the two witnesses cannot raise an inference that he may interfere with the said witnesses. I therefore find that the possibility of interference with the witnesses has not been shown.

The Applicant's Chamber Summons dated 18<sup>th</sup> February 2016 is accordingly allowed for the foregoing reasons, and I admit the Applicant to bail pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/= with one surety of similar sum.
2. The surety for the Applicant will be approved by the Deputy Registrar of this court.
3. The Applicant will attend mentions before the Deputy Registrar of the High Court, Machakos once every month until the case is heard and determined.
4. The Applicant shall be required to attend court for the remainder of the trial without fail.
5. In default of orders 1, 2, 3, and 4 hereinabove, the bond shall be cancelled immediately and the surety called to account.

It is so ordered.

**DATED AT MACHAKOS THIS 21<sup>st</sup> DAY OF APRIL 2016.**

**P. NYAMWEYA**

**JUDGE**