



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 87 OF 2015

ALEX MUTUNGA MWANZIA.....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 2nd December 2015 at Makutano in Nguu Nzau District within Makueni County, he murdered Winnie Mwende. The Applicant pleaded not guilty to the offence. The Applicant subsequently filed an application by way of a Notice of Motion dated 5th February 2016 seeking to be admitted to bail/bond pending the hearing and determination of his case, upon such terms and directions this Court may deem just and expedient.

The Applicant urged his grounds for the application in the said Notice of Motion, and a supporting affidavit he swore on 5th February 2016. The grounds are that he has a constitutional right to be released on bond or bail on reasonable conditions pending the hearing and determination of his case, and that there are no compelling reasons to warrant his continued incarceration. The Applicant undertook to abide by the terms and conditions that may be imposed by this Court.

The Applicant stated that he is 25 years old and that his parents are permanent residents of Makueni County, and are willing and ready to assist him abide with the conditions of bail/bond.

These grounds were reiterated in the Applicant's written submissions dated 23rd March 2016 that were filed by his learned counsel, Mulwa Isika & Mutia Advocates. Reliance was placed on Articles 49 (1)(b) and 51 (1) of the Constitution and the decision in **Republic –vs- Danson Ngunya & Another [2010] e KLR** in this regard.

The Prosecution opposed the Applicant's application in a replying affidavit sworn on 8th March 2016 by Sgt Martin Wanjala, a police officer currently attached to CID Emali, and the investigating officer in this criminal case. The deponent stated that if the Applicant is released he may target the witnesses, since some of the witnesses are his relatives. The prosecution relied on the bundle of the witness statements which it availed to the Court. It was further argued by the prosecution that considering the severity of the sentence provided by law for the offence of murder, which is the death penalty, this may be an incentive for the Applicant to abscond and is thus a compelling reason to deny him bail.

Article 49 (1) (h) of the Constitution permits the release of any arrested person including persons charged

with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. The issue in this application 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 the witnesses who are his relatives. No particulars or details of these witnesses and their relation with the Applicant were given by the prosecution. The Court is therefore not in a position to appreciate the nature of familial or physical proximity that exists between the Applicant and the alleged witnesses, and whether the Applicant will thereby be in a position to influence or in any other manner interfere with the said witnesses.

The Applicant's Notice of Motion dated 5th February 2016 is accordingly allowed as no compelling reason has been shown to deny the Applicant bail/bond. I accordingly admit the Applicant to bail pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/= with two sureties of similar sum.
2. The sureties 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 sureties called to account.

It is so ordered.

DATED AT MACHAKOS THIS 31st MAY 2016.

P. NYAMWEYA

JUDGE