



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE NO. 59 OF 2015**

**STEPHEN MWAI NDETI.....1<sup>ST</sup> APPLICANT**

**JOSEPHINE KAMANTHE MWAI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicants are the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons herein and are charged with murder contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on 26<sup>th</sup> June 2016 at Tana Ranch village, Kiatineni sub-location in Ndithini location of Masinga sub-county in Machakos County, they murdered Elijah Wambua Mwai. The Applicants pleaded not guilty to the offence. The 1<sup>st</sup> Applicant subsequently filed an application by way of a Notice of Motion dated 8<sup>th</sup> October 2015 and the 2<sup>nd</sup> Applicant a Chamber Summons dated 2<sup>nd</sup> February 2016 seeking to be admitted to bond/bail pending trial.

The Applicants urged their grounds for the application in the said applications and supporting affidavits they filed in support of their applications. Both applicants stated they are elderly with the 1<sup>st</sup> Applicant being 67 years of age, and the 2<sup>nd</sup> Applicant aged 58 years. The 1<sup>st</sup> Applicant in addition stated that he is sickly and the conditions in remand will accelerate the deterioration of his health. He annexed a copy of his treatment notes. Both Applicants averred that they have fixed places of abode and have children, and that there are no compelling reasons to deny them bond/bail.

The Prosecution did not oppose the Applicant's application and availed the Court the statements by witnesses. The learned counsel for the Applicants, Mr. Tamata and Ms Mutuku submitted that they would rely on the pleadings filed.

I have considered the pleadings and arguments made by the Applicant. The applicable law on bail/bond pending trial is Article 49 (1) (h) of the Constitution, which 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 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.

I note that the prosecution has not given any reason as to why the Applicants should be denied bail/bond, and I have also noted the fact that the Applicants are man and wife and elderly, with the 1<sup>st</sup> Applicant also being sickly and in need of medical attention.

I therefore find that no compelling reason exists to deny the Applicants bail/bond at this stage, and the Applicants' Notice of Motion dated 8<sup>th</sup> October 2015 and Chamber Summons dated 2<sup>nd</sup> February 2016 are allowed.

I accordingly admit the 1<sup>st</sup> and 2<sup>nd</sup> Applicant to bail/bond pending trial on the following terms:

1. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants shall each execute a bond of Kshs. 350,000/=, and shall each provide one surety of similar sum.
2. The sureties for the 1<sup>st</sup> and 2<sup>nd</sup> Applicants will be approved by the Deputy Registrar of this court.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants shall attend mentions before the Deputy Registrar of the High Court, Machakos once every month until the case is heard and determined.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants shall not have any contact with, or in any other manner interfere with the prosecution witnesses in this case.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants shall be required to attend court for the remainder of the trial without fail.
6. In default of orders 1, 2, 3, and 4 hereinabove, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' bond shall be cancelled immediately and their sureties called to account.

It is so ordered.

**DATED AT MACHAKOS THIS 3<sup>RD</sup> AUGUST 2016.**

**P. NYAMWEYA**

**JUDGE**