



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO. 44 OF 2014

REPUBLIC.....RESPONDENT

VERSUS

CHRISTOPHER WALTA.....1ST ACCUSED/APPLICANT

LEONARD LANGAT.....2ND ACCUSED/APPLICANT

R U L I N G

1. The Applicants, **Christopher Walta** and **Leonard Langat** were jointly charged with murder contrary to section 203 and 204 of the penal code.

The Applicants have appealed for bail pending trial.

2. According to the affidavits in support of their applications, it is averred that the Applicants are Kenyan citizens who are civil servants with fixed places of abode. The applicants undertake to attend court when required and have sworn not to interfere with prosecution witnesses.

3. The application is opposed. The investigating officer, **IP Peter Munene** in his replying affidavit states that the Applicants are police officers who worked at Nzangathi D.O's office. That the Applicants have a lot of influence and several witnesses have expressed fear if the accused persons are released on bail. There's apprehension that the applicants may interfere with witnesses. It is further averred that following the commission of the offence, the applicants disappeared for three months until their senior was compelled to return them to the station. The letter to the county **AP commander** Kitui requesting him to avail the applicants to the OCS Kitui Police station was annexed to the affidavit.

4. **Section 49 (1)** of the **Constitution** provides as follows:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending the charge or trial unless there are compelling reasons not to be released.”

5. However, the court has discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic (1986) KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behavior of an accused and the seriousness of the

punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is released on bond.

6. There are no reasons given in support of the assertion that the Applicant is likely to interfere with witnesses e.g. have they threatened or accosted any witness or tried to dissuade or compromise any witness against testifying?

7. On the question of absconding, the letter exhibited shows that the investigation file was forwarded to the office of the Director of Public Prosecution for perusal and advice and thereafter the County Commander was requested to hand over the Applicants to the OCS Kitui Police station for prosecution purposes. The said letter is dated 11/6/2014. The Applicants were arraigned in court the following month. The assertion that the Applicants disappeared from their work station is therefore not supported by any evidence.

8. With the foregoing, I allow the application on condition that the Applicants should not either directly or indirectly contact any of the prosecution's witnesses. The Applicants may each be released on a **Kshs. 1 Million** personal bond with one surety of a like sum

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B. THURANIRA JADEN

Dated and delivered at Kitui this 29th day of January 2015.

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B. THURANIRA JADEN

JUDGE