

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO. 73 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

1. ANNE MUENI MUTEMI

2. GEOFFREY MUTUKU MBUTA.....ACCUSED/APPLICANTS

RULING

1. By way of Notice of Motion **Anne Mueni Mutemi** (1st Applicant and **Geoffrey Mutuku Mbuta** (2nd Applicant) seek to be released on bail pending trial. The 1st Applicant states that she will abide with any conditions to be imposed by the court. In the affidavit in support of the application the 1st applicant depones that since her arrest she has cooperated and not hindered investigations.

2. The 2nd Applicant on the other hand stated that he was not a flight risk as he has a permanent place of abode and it will not be prejudicial for any party if released on bail.

3. In a replying affidavit, **No. 59105 Corporal Titus Munialo** deponed that the husband to Accused 1, **Nicholas Mutemi** had reported that he received threats from other suspects who were at large which was evidence that if released the accused persons would be a threat to witnesses. The 2nd Accused on the other hand has no fixed abode. Further, he stated that the witnesses are relatives of the accused persons therefore there is likelihood of interference with witnesses.

4. In determining whether or not to grant the accused persons bail, I must consider the most important criteria which is whether the accused persons will turn up for trial. Most decisions have however, alluded to other considerations which may be compelling reasons that would make a court decline to grant bail. One of the considerations is the likelihood of the accused interfering with witnesses or suppressing any evidence that may incriminate him or her. (See *Republic versus Danson Mgunya & Another (2010) eKLR; Alhaji Mujahid Dukubo - Asari versus Federal Republic of Nigeria S.C. 204/2006.*

5. With regard to Accused 2 it is averred that he has no fixed place of abode hence is a flight risk. He has deponed in his further affidavit that he has a place of abode at **Kithuki** sub- location of **Kathonzweni** Division, **Makueni** District. Ordinarily, a person would be released on specific conditions. It would not be easy for a person without a fixed place of abode to find a surety who would undertake to ensure his attendance. This would not be a good reason for a court to base on to deny a person bail.

6. In the **Mgunya** Case it was stated that each case must be decided on its own circumstances when it comes to enhancement of the rights and freedom granted and enshrined in the constitution.

7. With that in mind I must consider the averments of the Investigation Officer. It is averred and not denied that the accused persons are relatives of witnesses who will testify. He is apprehensive that they will interfere with the said persons. Further, it is stated that **Nicholas Mutemi** a husband to the 1st Accused received threats from other suspects who are still at large. He made a report to the police to that effect. A perusal of excerpts of reports made to the police show that indeed the said person is

apprehensive following the fact of other suspects being at large and the attempt made by the 1st Accused to reach him in an endeavor to discuss “*their relationship.*” The threat may be real or imagined but considering the fact that the apprehension prompted him to lodge a complaint with the police it may be important for the court to take the matter seriously. In the circumstances, it behooves upon this court to ensure his safety by taking evidence of witnesses who are related to the accused persons prior to releasing them on bail.

8. In the premises, I decline to grant the applicants bail at this stage. I however direct the state to avail all witnesses related to the accused persons on the hearing date **(2/6/2015)** when the application will be reconsidered.

9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 17TH day of MARCH, 2015.

L.N. MUTENDE

JUDGE