



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 40 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**BEATRICE WANTHI MUSEMBI .....APPLICANT/ACCUSED**

**RULING**

1. **Beatrice Wanthi Musembi**, the Applicant is charged with **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Per the allegation, on the 18<sup>TH</sup> day of June, 2014 at Ngwiwa Village, in **Nguumo** Location within **Makueni** County, jointly with another not before court murdered **Alim Mwapheso Katiwa**.

2. In an application dated 21<sup>st</sup> November, 2014 the applicant seeks to be released on bail pending trial. The application is based on grounds that the accused (applicant) has been in custody since 27<sup>th</sup> June, 2014; her freedom as guaranteed by the Constitution of Kenya, 2010 has been compromised since her arrest and it is her right to be released on reasonable bail terms.

3. The application is supported by an affidavit deponed by **Benjamin Munyoki Musau** whereby he reiterated what was stated in the grounds of the application and added that the applicant was arrested in connection with the murder of her nephew, and there are no compelling reasons that would prevent her release on bail.

4. **No. 56803 Inspector Gerald Ndirangu** swore an affidavit in reply. He stated that per the allegation, the Applicant had committed the offence of murder – jointly with another who is still at large; prosecution witnesses who will testify are members of the same clan and neighbours of the applicant who reside in the same locality, therefore, there was a high possibility of being fearful as the applicant already knows the kind of evidence they will tender as she has been supplied with statements.

5. The suspect who disappeared being a husband to the applicant, there was a likelihood of the applicant absconding. The expected sentence if convicted is severe which may tempt the applicant to abscond.

6. The paramount consideration in such an application is whether the accused will turn up for trial.

7. It has been held that the court would also consider the likelihood of the accused interfering with the witnesses or may suppress any evidence that may incriminate him ( see **Republic versus Danson Mgunya and Another H.C.CR,C No. 25 of 2008**).

8. It is not denied that witnesses who will testify will be the accused person's relatives (clan mates). There may be a possibility of interference with witnesses. In the premises, I decline to grant the applicant bail at this stage but direct the prosecution to avail witnesses on the hearing date **28/4/2015** when the application shall be re-considered after taking their evidence.

9. It is so ordered.

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

**L.N. MUTENDE**

**JUDGE**