



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 26 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JEREMIAH MOITA KODIKO.....ACCUSED**

**RULING**

1. The application dated 27<sup>th</sup> April, 2015 is for bail pending the hearing and determination of the murder trial herein.

2. According to the affidavit in support, the Applicant is a Kenyan citizen aged 24 years. It is further stated that the Applicant is married and has a wife who is expectant. It is further deponed that the Applicant is the sole bread winner of his family. The Applicant undertakes not to interfere with the investigations.

3. The application is opposed. It is asserted in the replying affidavit sworn by the investigating officer, PC Morris Muli that the Applicant is a flight risk. The reasons given are that the charge of murder attracts a severe sentence in the event of a conviction. It is further argued that the Applicant has been supplied with witness statements.

4. I have considered the submissions made on behalf of the parties. I note that the learned counsel for the State has called for terms and conditions to be imposed if bail is granted.

5. **Article 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.”***

6. 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.

7. The State has not given any compelling reasons why the Applicant should not be released on bond. Compelling reasons should not be a matter of conjecture, guesswork or speculation. Being supplied with statements of prosecution witnesses is a matter of right guaranteed by the Constitution under Article 50(2) (j). The provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.

8. With the foregoing, I allow the application on condition that the Applicant should not either directly or indirectly contact any of the prosecution's witnesses. The Applicant may 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 Machakos this 30<sup>th</sup> day of July, **2015**

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**B. THURANIRA JADEN**

**JUDGE**