

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 48 OF 2012

REPUBLICRESPONDENT

VERSUS

1. MUTETI SAMMY NDUNDA.....1ST APPLICANT
2. JOHN WAFULA NYUKURI2ND APPLICANT

RULING

Muteti Sammy Ndunda and **John Wafula Nyukuri** are facing trial for murder. The particulars of the offence are that on 10th June 2012 at about 8.30p.m. at Mathare Gateway Area within Huruma Area of Starehe Division, Nairobi murdered an unknown african male adult. They took plea on 9th July 2012 and denied the charge and were remanded in custody.

The accused have now applied for bail pending trial. The application has been contested by the State for the reason that the applicants were likely to interfere with prosecution witnesses. **PC Ayub Lwamba** has sworn a Replying Affidavit stating that the accused and the civilian prosecution witnesses reside in the same locality and that there is a high possibility of the accused intimidating or inflicting fear on the witnesses if released. This averment was expounded by **Ms Mwaniki** the prosecuting counsel in her oral submission before court.

In contesting the State's averments **Mr. Swaka** for the accused submitted that the applicants had a right to bail under the Constitution and that, as per their respective supporting affidavits, they have undertaken not to interfere with prosecution witnesses; and, to attend court whenever required.

I have carefully considered the rival affidavits and submissions. I take the view that the State's fear on the likelihood of the witnesses being or feeling intimidated is real. It is not disputed that prior to being remanded, the applicants and the civilian prosecution witnesses resided in the same block of flats in Huruma Gateway area. Considering that the 1st applicant is an employee of the Kenya Defence Forces, it is not farfetched for the civilian witnesses to be fearful if they were to continue residing together in the same flats.

Other than this fear, which can be cured by the conditions to be imposed by the court, I see no other compelling reason to deny the applicants bail. I am satisfied on the basis of the averments they have made and demonstrated in their supporting affidavits that they are neither a flight risk nor likely to abscond trial.

I allow their applications on the following conditions:-

- i. Each applicant to pay cash bail of One Million Shillings (Kshs.1Million) or execute a bond of KShs.1Million with 2 sureties of like amount.
- ii. Give evidence of their expected permanent place of abode and residential address which shall exclude their former flats at Gateway Area.
- iii. Shall not contact directly or indirectly or in any manner whatsoever interfere with prosecution witnesses.
- iv. Attend the Criminal Investigation Office whenever required.
- v. Attend monthly mention (before the Deputy Registrar). The first such mention shall be on 22nd April, 2014.

Ruling delivered, dated and signed at Nairobi this 18th day of March, 2014

R. LAGAT - KORIR

JUDGE