

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO.1 OF 2014

REPUBLIC PROSECUTOR

VERSUS

PETER MUTINDA MUTISO ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. He seeks to be released on bail pending trial. The application is premised on grounds that the accused is a family man and his continued incarceration - since **20th December 2013** is prejudicial to his rights; he has a place of abode which is within the jurisdiction of this court; the deceased was his nephew, therefore there is no apprehension of his presence in the family and that he is not afraid as he will raise a strong defence at the hearing.
2. The application is opposed. In a reply thereto, No. 59973 **Corporal David Sang** the investigating officer depones in his affidavit dated 6th February that the accused having been furnished with witness statements is aware of the weight of evidence against him; the accused resides within the same locality as witnesses; in the light of the violence and brutality meted on the person of the deceased, his nephew, his release would pose a danger to the prosecution witnesses; there was a likelihood of the accused tampering with witnesses; the sentence to be imposed in case of a conviction is an incentive to abscond.
3. Bail is a constitutional right. The court has the jurisdictional competence to grant bail as of right but it has its limitations. According to **Article 49(1)(L)** of the Constitution, if compelling reasons are established then bail cannot be automatic. It is argued by **Mrs. Abuga** learned state counsel that the deceased having been the accused's nephew, it is apparent that he will tamper with witnesses. The question to be answered is whether this is a compelling reason to necessitate the accused person's continued incarceration?
4. There are factors that must be considered in order to come up with an informed decision in the circumstances.

Such are the factors:

- i. The nature of the charge.
 - ii. The strength of the prosecution's case.
 - iii. Whether the accused has a settled address.
 - iv. The possibility of absconding.
 - v. The likelihood of interference with the prosecution witnesses.
5. Looking at the nature of the charge, the sentence to be imposed in case of a conviction is severe. However, the seriousness of the charge should not matter; this court should look at the strength of the case. At this stage it may be difficult to assert with certainty the actual strength of the case. However, it has been stated by way of affidavit evidence that murder occasioned on the person of the deceased was vile and brutal. Releasing the accused would therefore scare off witnesses whom he resides with. Their security would be at stake. It is not in doubt that the accused person has a settled address and it is not alleged that he may abscond. However, the evidence of interference with witnesses is compelling. In this case it cannot be stated that withholding the bail will be a punishment to the accused person.
 6. In the premises it is my considered view that this court will address the issue of releasing the

accused person on bail after taking testimonies of the witnesses. In the meantime the application is rejected.

7. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 22ND day of MAY, 2014.

L.N. MUTENDE

JUDGE