



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 24 OF 2014

REPUBLIC RESPONDENT

VERSUS

EUNICE SINTAMA LESALE

JACKSON LESALE LANOI

SERINA KORINKO ACCUSED/APPLICANTS

R U L I N G

1. The Applicants, **Eunice Sintama Lesale** and **Jackson Lesale Lanoi**, have applied for bail pending the hearing and determination of their murder trial.
2. According to the affidavit in support of the application, the Applicants are husband and wife, having celebrated their marriage under the **Maasai Customary Law**. That they are blessed with six children aged between four (4) months and fifteen (15) years who look upon them for care, protection, education and other basic needs. The Applicants undertake to attend court when required and not to interfere with prosecution witnesses.
3. The application is opposed by the prosecution. The Investigating Officer, **C.I. Stephen Ndeti** swore a replying affidavit which states that the accused persons and the witnesses reside in the same location and may interfere with witnesses. That the accused have already been supplied with witnesses statements and are also therefore aware of the weight of the evidence against them. That in the event of a conviction, the accused persons will face the death penalty which in itself is an incentive for them to abscond.
4. The Applicants in their supplementary affidavit have stated that they have not been supplied with any witness statements and that they are presumed innocent until proven guilty. They have also stated that their four month old lactating child is suffering in custody for lack of basic nutrition.
5. I have considered both the application and the reply to the same. **Section 49 (1)** of the **Constitution** states 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 Applicants as that would negate the Constitutional guarantee for bail in capital offences.
8. There are no reasons given in support of the assertion that the Applicants are likely to interfere with witnesses e.g. have the Applicants threatened or accosted any witness or tried to dissuade or compromise any witness against testifying? There is no such evidence.
9. The State asked the court to take judicial notice that the accused come from a pastoralist community and that they can relocate to some unknown place. However, each case depends on its own circumstances. Taking such judicial notice and denying the accused persons bail would amount to discrimination.
10. With the foregoing, I allow the application. The Applicants may be released on a Kshs. 2 Million personal bond each with one surety of a like sum.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 26th day of June 2014.

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B. THURANIRA JADEN

JUDGE