



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 34 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

JACKLINE JANET ODABA.....ACCUSED/APPLICANT

RULING

1. The application dated 24/9/13 seeks orders for release on bail pending the hearing and determination of the murder trial herein.
2. It is averred in the affidavit in support that the prosecution case is weak and incapable of securing a conviction, that the Appellant is the breadwinner of her young family which includes two minors and that there are no compelling reasons why the Applicant should not be granted bail. The Appellant is ready to abide by any terms of bail that may be imposed by the court.
3. The application is opposed. According to the replying affidavit sworn by the Investigating Officer, **Cpl. Benson Mwaniki**, the Applicant is likely to interfere with witnesses if released on bail and is also likely to abscond and go to the neighbouring country, **Uganda**, since she hails from the **Busia border**. The prosecution also pointed out the severity of the penalty that a murder charge attracts and stated that the same would give the Applicant an incentive to abscond.
4. 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.”

5. 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.
6. 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. The

provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.

7. There are no reasons given in support of the assertion that the Applicant is likely to interfere with witnesses e.g. has the Applicant threatened or accosted any witness or tried to dissuade or compromise any witness against testifying? There is no such evidence.
8. With the foregoing, I allow the application. The Applicant may be released on a Kshs. 2 Million personal bond with one surety of a like sum.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 25th day of September 2014.

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B. THURANIRA JADEN

JUDGE