



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 54 OF 2013**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**JANE WANJA MBOTE.....ACCUSED/APPLICANT**

**RULING**

1. The application dated 16/12/13 seeks orders for grant of bail pending the hearing and determination of the murder trial.
2. According to the affidavit in support, the Applicant has a permanent place of abode in **Naivasha**. It is averred that the Applicant will not interfere with witnesses and will abide by any conditions imposed by the court.
3. In opposition to the application, the Investigating Officer, PC **Julius Omondi** swore a replying affidavit. The prosecution's position is that the Applicant lives in **Kajiado County** where the prosecution witnesses reside and is likely to interfere with them. That the offence attracts a severe sentence which could be an incentive for the Applicant 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. This court called for a pre-sentence report from the probation office to confirm the Applicant's place of abode. The Probation Officer's report confirms the position given by the Applicant that she hails from

**Naivasha** and that is where she intends to go if released on bail. The charge sheet reflects the scene of crime as **Kajiado Township**.

7. Although the prosecution's submission is that the accused misled the police officers who investigated this case, there is no such averment in the affidavit of the Investigating Officer.

8. 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 Applicants as that would negate the Constitutional guarantee for bail in capital offences.

9. 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.

10. With the foregoing, I allow the application. The Applicants may be released on a Kshs. 2 Million personal bond with one surety of a like sum.

.....

**B. THURANIRA JADEN**

**Dated and delivered at Machakos this 25<sup>th</sup> day of September 2014.**

.....

**B. THURANIRA JADEN**

**JUDGE**