



No. 393/14

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 62 OF 2013

REPUBLICPROSECUTOR

VERSUS

PATRICK KYALO MUNYWA.....1ST ACCUSED

LAWRENCE MULWA MUNYWA2ND ACCUSED

RULING

1. The application dated **27th March, 2013** by the accused persons herein, is brought pursuant to the provisions of **Article 49(1) (h)** of the **Constitution**. It is for bond/bail pending trial.
2. It is premised on grounds that the accused persons are family men, married with children who depend on them for provision of their necessities in life; the accuseds are innocent until proven guilty; it is their right to be admitted to bail and there are no compelling reasons for not granting them bail.
3. The application is opposed by the State on grounds that the accused persons reside and carry on business within **Katheka-Kai Location, Machakos**, the same place that the witnesses reside, their release will therefore pose a security risk to the prosecution witnesses.
4. No. **85363 P.C. Ibrahim Gedi** Stated under oath that there was a likelihood of the accused persons tampering with witnesses which would be prejudicial to the prosecution's case. Further, he also deponed that a third suspect, a cousin to the two (2) accuseds had escaped arrest and is yet to be apprehended. Appreciating that the offence is bailable he averred that it is not absolute. He called upon the court to consider the seriousness of the charge and severity of sentence to be imposed as compelling reasons to deny the applicants bail.
5. Bail pending trial though not absolute is a fundamental right. It can only be denied if the court is satisfied that the accused persons are a flight risk. However, there may be compelling reasons that would call for such denial as well. For instance, the seriousness of the offence and the sentence likely to be meted out if the person is found guilty. In the instance case, severity or sentence has been alluded to. What is however, important is the apprehension that the accused persons may interfere with witnesses who are yet to testify.
6. Looking at the evidence adduced so far, the deceased was removed from his house and taken to the scene where he met his death. The accused herein live in the same neighbourhood with witnesses who testified and some of those that are yet to testify. They are neighbours living within the same community.

The question to be answered is if the witness's safety will be endangered or if the course of justice will be obstructed?

7. In the case of **Republic versus John Kahindi Karisa and 2 others –HCCR.C No. 20 of 2010 Ibrahim, J, (as he then was)**noted:-

“Murder involves the loss of life of a victim who is a father, mother, brother, sister, son or daughter in a society. There is a victim who lost life and an aggrieved family. Murder touches on the social fabric and it affects the security and peace in the community”.

8. The murder of the victim herein per the evidence did affect peace in the community, such that those who are lined up to testify as witnesses' may be apprehensive. There is definitely some threat. The fear of interference with witnesses may be real. In the circumstances, it is a case that would call for denial of bail at this stage. I wish to point out that the accused persons were arraigned in court in **December, 2013**. By **April, 2014**, three (3) witnesses had testified. On **10th July, 2014** the prosecution availed its witnesses but the defence counsel was not present which resulted into the case being adjourned. There has been no delay in hearing of the case.

9. The application for bail shall be reviewed after prosecution witnesses residing in the same area with the accused person's will have testified.

10. For now bail is denied.

11. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 17TH day of SEPTEMBER, 2014.

L.N. MUTENDE

JUDGE