



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION MILIMANI**

**CRIMINAL CASE NO. 46 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BERNARD WAINAINA MWANGI.....ACCUSED**

**RULING**

1. Bernard Wainaina Mwangi, the applicant, is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 13<sup>th</sup> of April 2014 at Annex Bar in Ndeiya Location Kiambu County, jointly with others not before the court murdered Benson Thiongo Muigai.
2. Pending the hearing and determination of this case, the applicant has brought this application through his defence counsel Mr. Oluoch, advocate, instructed by Oluoch-Olunya & Associates seeking to be admitted to bail/bond on reasonable terms. The application came by way of Notice of Motion anchored on Article 49 (1) (h) of the Constitution and Section 124 of the Criminal Procedure Code. The application is dated 18<sup>th</sup> June 2014.
3. The grounds in support of the application are found on the face of the application and the supporting affidavit sworn by the applicant on the same date. Briefly, the applicant states that the offence of murder is bailable under the Constitution; that he has unqualified constitutional right to be released on bond or bail on reasonable grounds; that he has unqualified constitutional right to be presumed innocent until the contrary is proved; that he will avail himself to court when needed and attend trial to its conclusion; that he is a Kenyan citizen and has at all material times resided in Kenya; that there are no compelling reasons why he should be denied bail and that he has no criminal record.
4. The applicant further states that he turned himself up to the police when he learned that they were looking for him in connection with this matter; that he is not a flight risk and that he is ready to deposit security for his release from custody.
5. Miss Matiru for the prosecution opposed the application on the ground that the witnesses live in Limuru and if released the applicant may interfere with them and this may make them apprehensive to testify. Miss Matiru urged the court to caution the applicant not to contact the witnesses in the event the court grants the application.
6. It is now settled that bail is a constitutional right. That right however is not absolute and can be denied on prove of compelling reasons. The State is tasked with the onus of presenting to the satisfaction of the court the compelling reasons. My reading of the brief submissions by the State in this case does not disclose serious opposition to this application and in my view stating that the applicant may interfere with witnesses is not compelling enough to persuade this court to deny the applicant bail.
7. Having considered the rival submissions, it is my considered view that without any compelling reasons having been advanced, I have no reason whatsoever to deny the applicant bail. Consequently, the application dated 18<sup>th</sup> June 2014 is hereby allowed. The applicant shall:
  - i. Execute a bond of one million Kenya shillings (Kshs. 1,000,000) with one surety of similar amount.
  - ii. In the alternative, the applicant shall deposit a cash bail of five hundred thousand Kenya shillings (Kshs 500,000) with the Chief Registrar of the Judiciary pending hearing and determination of this

case.

iii. Cautioned against interfering with the witnesses and notified that if such interference were to happen and were to be brought to the attention of this court, the bond/bail shall stand cancelled and the applicant shall be remanded in custody for the remainder of the trial.

Orders are made accordingly.

**Dated, signed and delivered this 30<sup>th</sup> October 2014**

**S. N. Mutuku**

**Judge**