

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 23 OF 2013

REPUBLIC

VERSUS

JOSEPH MUTUA KASUVA ACCUSED

RULING

1. The application dated 5/12/2013 seeks orders for bail pending the hearing and determination of this case.
2. The application is supported by the affidavit sworn by the Applicant, **Joseph Mutua Kasuva**. The Applicant is charged with the offence of murder. It is deponed in the said affidavit that the Applicant is not a flight risk as he has a permanent place of abode in **Makueni County**. That the Applicant will not interfere with the prosecution witnesses and will abide by any conditions set by the court. The Applicant further averred that he suffers from poor health which has deteriorated due to lack of treatment in prison.
3. The application is opposed by the State. It is contended in the replying affidavit Sworn by the Investigating Officer, **Davis Makabila**, that the Applicant is a resident of **Makueni County** where the prosecution witnesses also reside. The prosecution is apprehensive that the Applicant is likely to interfere with the prosecution witnesses. It was further averred that the charge of murder attracts a severe sentence which on its own is an incentive for the Applicant to abscond.
4. Under **Section 49 (1)** of the **Constitution** provides 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. 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 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. have they threatened or accosted any witness or tried to dissuade or compromise any witness against testifying?
8. With the foregoing, I allow the application. The Applicants may each be released on a **Kshs. 1 Million** personal bond with one surety of a like sum.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of October 2014.

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B. THURANIRA JADEN

JUDGE