



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION (MILIMANI)**

**CRIMINAL CASE NO. 106 OF 2013**

**ELIJAH WERU MATHENGE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant, Elijah Weru Mathenge, is facing a murder charge. He is accused of killing one Rosemary Njoki Nyaga on 4<sup>th</sup> November 2013 at Lenana Estate Dagoretti Nairobi.

2. He has brought this application dated 29<sup>th</sup> October 2014, through his advocate Mr. Gachau, seeking to be admitted to bail or bond pending the hearing and determination of his case. The application is anchored under Articles 19, 20, 23 and 49 (1) (h) of the Constitution of Kenya 2010. The application is supported by an affidavit sworn by the applicant in which he deposes that he is gravely ill suffering from acute kidney problem and requires specialized medical attention which cannot be administered while in remand prison. Mr. Gachau submitted that applicant has already exhausted Kshs 3,000 allocated to him at the Remand Prison and cannot continue being medically attended to at the same facility.

3. The applicant has attached several medical notes to support his medical problem. Among the documents submitted is a letter from the Nairobi Remand Prison Health Centre where the applicant has been attended. It is dated 3<sup>rd</sup> October 2014 and shows that the applicant suffers from acute kidney illness, sepsis and meningitis as well as depression and experiences difficulty in speech. It also shows that the applicant is taking antidepressants and has inability to pass urine necessitating use of a catheter. The letter requests that the applicant can be better managed out of custody.

4. The applicant has also attached an affidavit sworn by on Nyakanini Mathenge who is said to be his mother. She deposes that the applicant will live with her at Kwa Huku Village Nyeri and that she will ensure that he complies with the bail/bond conditions.

5. The application is not opposed by the respondent for the reason of the applicant's health.

6. I have considered this matter and noted the copies of medical documents attached. I have also noted that the prosecution has so far called seven (7) witnesses to testify. The next hearing date, which is yet to be fixed, will probably be in February or March 2015. I note that the medical condition the applicant is suffering from can be better attended outside remand custody and this fact has been acknowledged by the In Charge of the Nairobi Remand Prison Health Facility. I have considered that the paramount consideration in any bail/bond application is that the applicant attends court until his/her case is heard and fully determined. I have taken into account the affidavit of Nyakanini who has undertaken to ensure to take care of her son and ensure he attends court when required. In view of his serious health condition and given that the application is not opposed, I will and do hereby allow the application on the following terms:

(i) The applicant shall execute a bond of Kenya Shillings one million (Kshs 1,000,000) with one

surety of similar amount.

(ii) In the alternative the applicant shall pay cash bail of Kenya Shillings two hundred thousand (Kshs 200,000) which shall be deposited with the Chief Registrar of the Judiciary.

7. It is so ordered.

**Signed, dated and delivered this 9<sup>th</sup> day of December 2014**

**S.N. MUTUKU**

**JUDGE**