

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Case No. 24 Of 2012

ELIJAH MUTISYA MUNYAOAPPLICANT/ACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (*Cap 63*) Law of Kenya.
2. He seeks to be released on bond pursuant to the provisions of Article 21(1) and 49 (1) (h) of the Constitution of Kenya.
3. In his application dated 14th November, 2012 he states that it is in the interest of justice for him to be released on bail upon such terms and conditions the court may find just to impose. The application is also based on grounds that he is innocent till proven guilty; staying in custody pending trial will be detrimental to him.
4. The application is supported by his affidavit in which he states that he will avail himself for trial and there are no compelling reasons that would work against his release on bail.
5. The application is not opposed by the State. No State Counsel was available in court to comment on the application.
6. Article 49(1) (h) of the Constitution provides :-

“An arrested person has the right... to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released”.

7. The State having not opposed the application, it is apparent that there are no compelling reasons that would make the accused not be accorded his constitutional right of being out on bail pending trial.
8. The only consideration this court should have in mind is whether the accused is a flight risk. He has deposed that he was employed as a watchman at his rural home in Kilembwa village. His parents are peasant farmers. He was willing to avail himself for trial without any failure. There is no evidence to controvert what he asserted.
9. In the circumstances, I have absolutely no reason to deny him bail. He may be released on bond of 1 million with a surety of similar sum.

DATED, SIGNED and DELIVERED at MACHAKOS this 21ST day of JUNE, 2013.

L.N. MUTENDE

JUDGE