

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 27 OF 2012

REPUBLIC RESPONDENT

VERSUS

KIOKO KITILI MWONGELA1st ACCUSED

DAVID MUSEMBI NYAMAI 2ND ACCUSED/APPLICANT

R U L I N G

Following the ruling dated 22/7/2013 and the application for review of the same, I have considered the averments in the further affidavit sworn by the Applicant, **David Musembi Nyamai** on 19/3/2013.

The Applicant has a Constitutional right to a fair trial which entails adequate time and facilities to prepare a defence. This includes being supplied with copies of statements of prosecution witnesses. Whether the Applicant has been supplied with statements or not should not *per se* be an issue in determining a bail application.

The Applicant in the further affidavit has denied any knowledge of the matters raised in paragraph No. 7 of the replying affidavit concerning the deceased herein having been mentioned as a witness in **Criminal Case No. 191/2012 at Makueni Law Courts**. It is clear from the replying affidavit referred to that the Applicant was not a party to the said Criminal Case at **Makueni Law Courts** but his co-accused, **Kioko Kitili**. However the Applicant herein is jointly charged with the said **Kioko Kitili**.

After considering the application, the reply and the further affidavit, I am still not convinced that the Applicant merits to be released on bail pending appeal. I still stand by the ruling herein that the reasons given by the prosecution are compelling to warrant the denial of bail. The application is dismissed.

.....

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 25th day of July 2013.

.....

B. THURANIRA JADEN

JUDGE