



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 5 OF 2013

REPUBLIC RESPONDENT

VERSUS

MICHAEL MUKUNDI NYAGA..... ACCUSED/APPLICANT

RULING

1. The Applicant, **Michael Mukundi Nyaga**, is charged with two counts of murder contrary to **section 203** as read with **section 204** of the **Penal Code (Cap 63), Laws of Kenya**.

The particulars of the offence are that on the 16th day of November 2013 at **Mutitu Andei** Trading Centre in **Kibwezi District** within **Makueni County** murdered **Joyanne Wawira Nyaga**.

2. The Appellant was arraigned in court on 21/1/13. He pleaded not guilty. On 23/5/2013 the Applicant filed an application seeking orders that he be released on bail/bond pending the hearing of his case.
3. The application is supported by the affidavit sworn by the Applicant on 23/5/2013. The Applicant is apprehensive that the trial may take long due to the volume of work in the High Court. The Applicant undertakes to honour the conditions of bail/bond and not to interfere with witnesses.
4. The application is opposed by the State. According to the replying affidavit sworn by the Investigating Officer **PC Paul Kanyeki** on 29/5/2013. The Applicant has already been supplied with the statements of prosecution witnesses and there is a likelihood that he may interfere with them as they are known to him. That the charge of murder attracts a death sentence which is an incentive for the applicant to abscond.
5. I have considered both the application and the reply to the same. **Section 49 (1)** of the **Constitution** states 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.”

6. 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.

7. 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)**. There are no cogent reasons given in support of the assertion that the Applicant is likely to interfere with witnesses. The provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.
8. With the foregoing, I allow the application. The Applicant may be released on a Kshs. 2 Million personal bond with one surety of a like sum.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 20th day of September 2013.

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B. THURANIRA JADEN

JUDGE