



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC. APPLICATION NO. 143 OF 2012

1. **THOMAS MUMO MWASYA**
2. **ZACKARY MUOKI MWANZA**
3. **JOHANNES MUTISYA MULUILA**
4. **JOHNSON NGUNGI NGUMBI APPLICANTS**

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. The Application filed in court on 2/10/2012 seeks orders for the review of the bail application.
2. The grounds are set out in the affidavit in support. It is averred that bail is a Constitutional right and that there are no compelling reasons in this case why that right should be curtailed. The accused persons have stated that they are ready to abide by the terms given by this court.

The application is opposed by the State. The Investigating Officer swore a replying affidavit on 30/1/2013 stating that there was a likelihood of the accused persons interfering with witnesses. It was also stated that the accused face the charge of murder which is a serious offence and attracts a severe sentence.

3. On 23/5/2011, this court made a ruling that denied bail pending trial at that stage. In the said ruling, the court made the following observations:-

“It is also evident from the prosecution witness statements annexed to the supporting affidavits that the accused persons know the identities of the witnesses and the nature of their evidence. In these circumstances, it is not unreasonable for the state to express the fear that the accused persons who are prominent people within Makueni District should inflict fear or compromise the prosecution witnesses who reside in the same locality.”

4. Subsequently, on 25/7/12, three prosecution witnesses testified. The prosecution then applied for adjournment and also applied for court summons to compel the attendance of three prosecution witnesses, that is, the doctor and two police officers. The case thereafter stalled for one reason or the other.
5. The replying affidavit was filed long after the evidence of the three prosecution witnesses who reside in the same locality with the accused persons testified. The replying affidavit does not mention whether there are any witnesses from that locality who are yet to testify. What can be construed from the prosecutions’ application for adjournment after the three witnesses testified is that the remaining witnesses are formal witnesses who do not fall in the category of the witnesses referred to by the prosecution is likely to be interfered with.
6. It is noted from the replying affidavit that the accused persons reside in **Makueni**. There are no

reservations expressed by the prosecution that the accused are likely to abscond. The mother of all considerations on whether or not to grant bail is whether the accused will attend court for trial.
7. With the foregoing, I am persuaded to grant bail. I therefore allow the application. Each accused may be released on a personal bond of **Kshs.1 Million** 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