



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 52 OF 2011

REPUBLIC RESPONDENT

VERSUS

CATHERINE NDUNGE MUTHOKA ACCUSED/APPLICANT

RULING

1. The Applicant, **Catherine Ndunge Muthoka**, 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**.

In Count I, the particulars of the offence are that on the 15th day of August 2011 at **Athi Bridge, Kabaa Sub-Location, Mbiuni Location** of **Mwala District** within **Machakos County**, murdered **Alfonse Mutinda**.

In Count II, the particulars of the offence were that on the 15th day of August 2011 at **River Athi Bridge, Kabaa Sub-Location, Mbiuni Location** of **Mwala District** within **Machakos County**, murdered **Agnes Nduku Ndunge**.

2. The Applicant was arraigned in court on 7/9/11. She pleaded not guilty. Vide application dated 17/6/13, the Applicant applied for bail. The application is supported by the affidavit sworn by the Applicant on the same date.
3. The Applicant has deponed that she has been in custody for two years. That she is an orphan and prior to her arrest she was living with her grandmother who she was taking care of. The Applicant has further averred that she wants to rebuild her life by going back to school but fears that the trial may take long due to the large volume of work in the High Court.
4. The application was opposed by the State.
5. According to the replying affidavit sworn by the Investigating Officer, **PC Peter Kipkoech Yegon**, the Applicant and the witnesses are members of the same clan and the Applicant may interfere with the witnesses. It is further averred that after the offence, the Applicant disappeared from home and was arrested one week later from **Mlango Kubwa** area of **Nairobi** where she had escaped to. That while in the custody of **Yatta Police Station**, the Applicant escaped and was subsequently charged with **Criminal Case No. 572 of 2011**.
6. 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.”

7. 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.

8. The mother of all considerations in an application for bail is whether the Applicant will turn up for trial. The averments by the Investigating Officer that the accused disappeared from home after the offence and was arrested a week later in **Mlango Kubwa** area of **Nairobi** are not rebutted by the Applicant. Similarly, the averment by the Investigating Officer that the Applicant escaped from **Yatta Police Station** after arrest is not controverted by the Applicant.
9. In the premises therefore, I agree with the submissions by the State that there is a high chance the Applicant may jump bail. The application is therefore dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of September 2013.

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JUDGE