



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 18 OF 2013

REPUBLIC RESPONDENT

VERSUS

JACOB NGUCIA MWENDWA ACCUSED/APPLICANT

RULING

1. The Applicant, **Jacob Mwendwa Ngucia**, 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 4th day of April, 2013 at **360 Estate Syokimau** in **Athi River District** within **Machakos County** murdered **Josphine Kimutu**.

In Count II, the particulars of the offence were that on the 4th day of April 2013 at **360 Estate Syokimau** in **Athi River District** within **Machakos County** murdered **Alyana Muthoni**.

2. The Applicant was arraigned before this court on 22/4/2013. The Applicant pleaded not guilty. The application dated 15/5/2013 seeks an order for grant of bail. The grounds upon which the application is premised are set out in the affidavit in support. It is averred that the investigations are now complete. That the Applicant is entitled to the presumption of innocence until proved guilty and ought to be released on bail now that there are no compelling reasons why he should not be released on bail/bond. The Applicant has further stated that he has no intentions of absconding and will abide by any conditions set by the court. He gave his permanent place of abode as **House Number 13, Peal Villas**, opposite **Nairobi School, Nairobi**.
3. The Applicant further averred that he is a single parent to his nine (9) year old daughter who needs his parental care. The Applicant expressed his fear that the trial may take long due to factors beyond his control.
4. The application is opposed. According to the replying affidavit of the Investigating Officer **Cpl. Ahmed Haji**, there is a likelihood that the Applicant may interfere with witnesses if granted bail. It was also stated that the offence 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 reasons given by the State in objecting to bail do not to my view amount to compelling reasons as envisaged under **Article 49 (1)** of the **Constitution's** compelling reasons does not mean guesswork, conjecture or speculation. It means the State must give strong and convincing reasons.

The possibility of interference with prosecution witnesses ought to be supported by cogent evidence. The supply of witness statements to the Applicant and the fact that the offence of murder attracts a death penalty should not be used against the Applicant otherwise the same would negate the **Constitution** provision for issuance of bail in capital offences.

8. With the foregoing, I allow the application. The Applicant may be released on a personal bond of Kshs.2 Million with one surety of a like sum.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 18th day of September 2013.

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JUDGE