



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 11 OF 2013**

**REPUBLIC ..... RESPONDENT**

**VERSUS**

**JOSIAH MUTHIANI MAWEU..... ACCUSED/APPLICANT**

**R U L I N G**

1. The Applicant, **Josiah Muthiani Maweu**, 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 1<sup>st</sup> count are that on the 25<sup>th</sup> day of November 2012 at **Ndela village, Mananja Location** in **Masinga District** within **Machakos County** murdered **Wanza Tuta**.

The particulars of the 2<sup>nd</sup> count are that on the 25<sup>th</sup> day of November, 2013 at **Ndela village, Mananja Location** in **Masinga District** within **Machakos County** murdered **Tuta Ndinda**.

2. The Applicant pleaded not guilty. The Applicant has applied for bail pending the hearing and determination of the case herein on the following grounds:-
  - a. **That there are not compelling reasons for denial of bond.**
  - b. **That the Applicant will not abscond and will abide by any terms imposed by the court.**
3. The application was opposed to by the State. The Investigating Officer, **IP. Michael Kahare** swore a replying affidavit on 12/6/13. The application is opposed on the following grounds:-
  - a. **That the Applicant has been supplied with witness statements and is aware of the weight of the prosecution case and may tamper with witnesses and his release may also pose a security threat to the witnesses.**
  - b. **That during the course of investigations, the Applicant had lied that he hailed from Kathama, Mbiuni Location, Mwala District but it was found that he hailed from Kanzokea, Makueni County.**
  - c. **That the seriousness nature of the offence and the severity of the sentence provided for by the law is an incentive for the Applicant to abscond.**
4. 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.”**

5. 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.
6. 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.
7. The issue of where the Applicant hails from has been settled by the pre-bail report which gives the Applicant's home particulars and has recommended the Applicant as suitable for release on bond.
8. With the foregoing, I allow the application. The Applicant may be released on a Kshs. 1 Million personal bond with one surety of a like sum.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 19<sup>th</sup> day of December 2013.**

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**B. THURANIRA JADEN**

**JUDGE**