



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CRIMINAL CASE 29 OF 2012**

**REPUBLIC**

**VERSUS**

**1. NO. 66003 SGT THOMAS KIPKEMOI KIPKORIR)**  
**2. NO. 217643 APC . JOSEPH KOMEN YATICH ).....ACCUSED(S**  
**3. NO. 21652 APC SEBASTIAN YANO KOMEN )**

**RULING**

By a Notice of Motion Dated 11<sup>th</sup> day of June, 2012, pursuant to the provisions of Articles 19, 20,23 and 49 (i) (h) of the Constitution of Kenya, 2010, section 19 of the 6<sup>th</sup> schedule of the Constitution of Kenya, the applicant seeks orders:-

1. That this honourable court be pleased to admit the 2<sup>nd</sup> accused/applicant to reasonable bond and/or bail terms pending the trial.
2. Costs of this application be provided for

The application is based on the grounds:-

1. That the 2<sup>nd</sup> accused/applicant in this case is charged with murder contrary to section 203 as read with section 204 of the Penal code.
2. That this honourable court has jurisdiction to admit the applicant to reasonable bond and/or bail terms.
3. That there are no compelling reasons why the 2<sup>nd</sup> accused/applicant should not be admitted to bail.

The application is based on the grounds:-

- (i) That the 2<sup>nd</sup> accused/applicant in this case is charged with murder contrary to section 203 as read with section 204 of the Penal code.
- (ii) That this honourable court has jurisdiction to admit the applicant to reasonable bail and/or bail terms.
- (iii) That there are no compelling reasons why the 2<sup>nd</sup> accused/applicant should not be admitted to bail.

The application is predicated upon the annexed affidavit of Joseph Komen Yatich sworn on the 11<sup>th</sup> day of June, 2012.

On behalf of the applicant it was urged that he is entitled to be released on bail, save where there exists compelling reasons.

That he seeks bail to facilitate proper preparation for his trial in addition to providing for his family as he is duty bound to do.

That he is in the employee of the Government of Kenya as an Administration Police Officer and hence will be within the jurisdiction of this court.

That he is willing to attend court as and when required to do so. He also undertook not to interfere with the prosecution's witnesses.

Last but not least, that there are no compelling reasons for denying him bail.

The application was served upon the D P P's office who failed to respond by putting in a replying affidavit at all.

I have considered the reasons advanced by the applicant for seeking bail and note that he requires ample time to prepare his defence. In addition to fending for the family.

The purpose of bail is to ensure the attendance of the accused at his trial and not to seek to evade justice. The amount of bail will vary according to the circumstances and the nature of the offence, the possible punishment and the station or position in life of the accused. It should not be more than will probably secure the attendance of the accused, and should never be so large as to amount to a denial of bail.

Each case should be treated on its own merit. The guidelines is the available evidence.

In this case, the evidence is that the applicant is an employee of the Government of Kenya in the capacity or position of Administration police. That he requires ample opportunity to prepare his defence and also to look after his family. I take judicial notice of the fact that as an employee of the Republic of Kenya facing a Criminal offence he cannot leave the jurisdiction of the court without permission of his superiors. I also take into account that the investigation is deemed complete when the decision to charge the accused was made. In those circumstances, there is no danger that the applicant will interfere with investigations. If he does, the prosecution shall be at liberty to apply for cancellation of his bail and/or bond as the case may be.

Last but not least, it must always be remembered that the grant of bail is not automatic. It is always at the discretion of the court. It is upon the court to weigh the available evidence for and against the grant of bail.

In the peculiar circumstances of this case, the evidence embodied in the supporting affidavit appears to me to be sufficient in the light of the fact that the prosecution did not put in a replying affidavit in rebuttal of the evidence embodied in the affidavit in opposition to the application.

In the result, I am inclined to grant the application on the following terms:

- (1) the applicant to deposit with the court a sum of shs. 500,000/= cash bail and one surety of like sum.
- (2) the applicant to report to the O C S Industrial Area Police Station every alternate Monday of every month until the case is heard and determined.
- (3) the applicant will undertake not to make any contacts, whether directly or otherwise with any of the witnesses to be summoned by the prosecution.
- (4) the applicant shall not leave the jurisdiction of this court without prior orders of the court.
- (5) the applicant shall attend all court sessions when and if so required.

Dated, signed and delivered at Nairobi this 28<sup>th</sup> day of June, 2012.

**N R O OMBIJA**

**JUDGE**