



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

**HCCR.C.NO.62 OF 2008**

REPUBLIC.....APPLICANT

VERSUS

CHARLES NGEI MWENDWA.....RESPONDENT

**RULING**

(1) On the 23<sup>rd</sup> February, 2011 Charles Ngei Mwendwa (“**the Accused Person/ Appellant**”) took out a Chamber Summons under Article 49(1)(h) of the Constitution seeking an order that he be released on bond/bail pending the hearing and determination of this case. He is charged with the offence of murder contrary to Section 203 and 204 of the Penal Code as stated in an information filed on the 15<sup>th</sup> July, 2008.

The application is supported by the Accused Person’s own affidavit sworn on the 16<sup>th</sup> February, 2011 in which he deponed that he is a peasant farmer from Nzeluni Sub-location within Kitui County and promises to attend court and be available at the trial as the court requires.

(2) In opposition to the application, Cpl. Alex Ogotu made a replying affidavit on the 22<sup>nd</sup> March, 2011. After summarizing the events before the Accused Person was arrested and charged, the deponent goes on to state that in view of the sentence facing the Accused Person if convicted, the temptation to abscond if released on bail is real. He also says that the Accused Person would not be safe at home if released considering that he had killed his wife and secretly buried her about two meters away from his house where the grave was discovered by members of the public including the relatives of the deceased.

(3) Mrs. J. M. Mutua, learned counsel for the Accused Person, noted in her submission that most of the prosecution witnesses have already given their evidence and that only the formal witnesses remain to testify. She argued that the Accused Person had been living well in society before he was charged and that it would be in the interests of justice for him to be released so that he could return to his young children and the other members of his family.

(4) In opposing the application, Mrs. Christine Gakobo, learned State Counsel, contended that the sentence that would be imposed on the Accused Person if convicted is enough incentive for him to abscond. She said that although four witnesses for the prosecution have already testified, there are two civilian witnesses still to testify and there is fear that the Accused Person may come into contact with them, thereby compromising their willingness to give evidence, citing the decision in **Republic – vs- Joseph Wambua Mutinga and three Others** (Nairobi HC. Criminal Case No.23 of 2008).

(5) I have considered the application in light of the submissions of both learned counsel and the cases the court has been

referred to including the decision of Ibrahim, J in **Republic –vs- Danson Ngunya and Another** (Mombasa H.C. Criminal Case No.26 of 2008).

In paragraph 11 of the Replying Affidavit, Cpl. Ogutu States:

***“THAT considering the serious nature of the offence, the sentence provided for in law and the likelihood of the applicant absconding, I urge this Honourable Court to find that there are compelling reasons as to why the applicant should not be released on bail and exercise its discretion and not grant bail in favour of the applicant”.***

I have noted that the Accused Person is a peasant farmer who is a Kenyan citizen and that he wishes to be released on bail so that he may return home and take care of his young children. I have also taken into consideration that the majority of the prosecution witnesses have testified. The State has not demonstrated in which manner the Accused person is likely to compromise the remaining prosecution witnesses. I am therefore not persuaded that there are any compelling reasons to warrant the denial of bail to the Accused person. I will accordingly, allow the application.

(6) Allowing the Application, even as it fulfills the terms of the Constitution, must not compromise the public interest and the rights of the complainant and the family of the deceased. I therefore make the following orders:

**(i) The Accused person is granted a personal bond of the value of KShs.1,500,000/- (One million, Five Hundred Thousand) together with two (2) sureties each of like amount, the sureties each to submit recognizances to be verified by the Deputy Registrar of this court.**

**(ii) The Accused Person shall report to the Officer-in-Charge (OCS) of the nearest Police Station to the home of the Accused Person to be (determined by the Deputy Registrar) every Tuesday in each week of every calendar month and shall also attend court on such dates and times as the court directs.**

**(iii) The Accused person shall inform the OCS of his intention to travel outside the jurisdiction of the OCS before he travel. He shall also provide the OCS will all relevant information of his mode of travel, his next and final destination and residence and the duration of stay outside the jurisdiction of the OCS.**

**(iv) In the event that the Accused Person wishes to travel outside Kenya for any reason whatsoever, he shall first seek and obtain an order of the High Court.**

Orders accordingly.

Dated and delivered at Machakos this 23<sup>rd</sup> day of May, 2011.

**P. Kihara Kariuki**  
**Judge**