



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**HCCRC. NO.22 OF 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**TIMOTHY KITILI SYENGO.....ACCUSED**

**RULING**

1. This is an application for bail brought by way of an Originating Summons dated the 18<sup>th</sup> February, 2011 and filed on the 24<sup>th</sup> February, 2011 under Article 49(1) (h) of the Constitution. Timothy Kitili Syengo (the Applicant) in the supporting affidavit sworn on the 18<sup>th</sup> February, 2011 says that on the 30<sup>th</sup> June, 2010, he was arraigned in court and charged with the offence of murder contrary to Section 204 of the Penal Code. Upon pleading not guilty, he was remanded in custody and has therefore filed this application to secure his release pending trial. The Applicant, a family man with four young children, asserts that he will abide with whatever conditions and terms that the court may set aside and that he will be available at his trial whenever required. An employee of the Kenya Forest Services working as a Forest Ranger in Kilungu Forest Station, the applicant further depones that he does not know any of the witnesses and had no control and influence over them. He had in the course of his duties been instrumental to securing the arrest and prosecution of many suspects whom he has now found in the remand home where he is held in custody.

2. The State filed the replying affidavit of Sgt. Martin Wanjala dated the 18<sup>th</sup> March, 2011 in opposition to the application. He says he was the Investigation Officer in the case against the applicant's property seized of the facts. He says that the deceased person in the company of others were ferrying charcoal from Kajiado to Nairobi in a lorry and were stopped by the armed Forest Rangers (of whom the Applicant was one) who threatened to detain the lorry unless a bribe of KShs.50,000 was paid to them. That on sensing danger the deceased person and two others, two turn boys attempted to run from the scene, leaving the driver. The Applicant fired in the direction of the deceased person and his two colleagues, the latter who were shortly arrested by the members of the public and brought back to the scene where the lorry and driver had been detained.

3. In paragraph 6, 7, 8 and 9, Sgt. Wanjala further depones as follows:

**“6.That efforts to trace the deceased that day yielded no fruits and it was two days later that his body was discovered in church compound by members of the public with gunshot wounds on the head.**

**7. That I commenced investigations pursuant to which I forwarded the two firearms, one issue to the accused, and the other to his colleague and empty cartridges to ballistic examiner to determine the source of the fatal shot on the**

deceased head.

**8. That results of the ballistic examiner linked the fatal shot to the firearm that was in possession of the applicant/accused on the material time and this informed my decision to charge his with murder.**

**9. That the evidence against the accused person is overwhelming.”**

The deponent concludes by stating that in view of the severity of the sentence if convicted, there is a real likelihood and temptation that the Applicant will abscond and he should be denied bail.

4. I heard rival argument in support and in opposition to the application in submissions by both learned counsel who referred me to the decisions of this court in similar applications made in Republic vs. Danson Mgunya and Another (Mombasa H.C. Cr. Case No.26 of 2008) and Republic vs. Mary Wambua and others (Machakos H. C. Cr. Case No.28 of 2010).

5. I have considered the supporting and replying affidavits in light of the respective submissions of both learned counsel. I have noted in particular the averments made in paragraphs 6, 7, 8 and 9 of Sgt. Wanjala's affidavit which I have reproduced in full hereinabove. He says that it was the applicant who fired in the direction of the deceased person; that the body of the deceased person was found two days later with gunshot wounds on the head; and that the results of the ballistics examiner have linked the fatal shot to the firearm that was in the possession of the applicant at the material time.

6. In the case of the **Republic vs. Danson Mgunya and Another** (*Supra*) cited by learned counsel for the Applicant, the court followed, and properly in my respectful view, the following holding of Justice Ibrahim Tanko Muhammad, JSC., in the decision of the Supreme Court of Nigeria in **Alhaji Mujahid Dukubo Asari vs. Federal Republic of Nigeria** S. C. 20A/2006:

**“...when it come to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision. These criteria have been well articulated in several decisions of this court. Such criteria include among others, the following:**

- (i) The nature of the charges**
- (ii) The strength of the evidence which supports the charge.**
- (iii) The gravity of the punishment in the event of conviction.**
- (viii) The probability o of guilt.”**

7. In addition to the reasons stated in paragraph 5 hereinabove read in conjunction with the criteria set out above, I have also taken into account that not a single prosecution witness has testified to date and though no evidence has been adduced to demonstrate that the Applicant is likely to interfere with witnesses, the witness statements will have identified the witnesses and the nature of their evidence.

8. In the result and for the reasons I have given, I am persuaded that there are compelling reasons why the Applicant should not be released on bail or bond pending trial. The Application in the Originating Notice of Motion dated the 18<sup>th</sup> February, 2011 accordingly fails and is hereby dismissed.

So ordered.

Dated and delivered at Machakos this 20<sup>th</sup> day of July, 2011.

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