



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 27 OF 2013

REPUBLICPROSECUTOR

VERSUS

NICHOLAS MUASYA BERNARD1ST ACCUSED
SERA MWENDE.....2ND ACCUSED
MULI NGINA.....3RD ACCUSED
PATRICK MUIA KAINDI.....4TH ACCUSED

RULING OF THE COURT

1. There are two (2) Notice of Motion applications before the court. The first one is filed herein on **22nd January, 2016** and is filed by the 4th accused person seeking of the main prayer that the 4th accused person be released on bail pending the hearing and determination of the case.
2. The second Notice of Motion is filed herein on **26th July, 2016** by the 1st accused and 2nd accused persons also seeking bail pending hearing and determination of the case.
3. The applications are based on the grounds that the applicants are Kenyan citizens and are not flight risk, and that they are ready and willing to abide by any conditions that may be set by the court as the bail term. They further state that their co-accused the 3rd accused has already been released on bail. Both applications are supported by the affidavits of the applicants which are on record.
4. There is no indication on record that the state opposes the application. Parties were directed to file submissions to the two (2) applications. Only the 4th accused person filed submissions.
5. Be that as it may, this court notes that bail or bond is now a constitutional right of every accused person, and that a court on its own motion can grant such a right. However, where the grant is disputed, it has to be shown that there are substantial and compelling reasons why the right should be denied. In the two (2) applications before the court no submissions have been made to disclose any compelling reasons why the applicant's cannot be released on bail or bond.
6. Record also show that the 3rd co-accused was released on bond of Kshs. 1 million on **24th November, 2015**. There is therefore no compelling reasons to deny bond. What perhaps this court should consider is the terms of the said bond. For bond or bail to regain its usefulness it must be based on terms which are reasonable and which make it attainable to the accused persons. If terms of bail or bond are made

unreasonable harsh or unattainable it could amount to denial of the very right that is guaranteed by the constitution. With that observation in mind, I allow the two (2) applications and herewith release the 1st, 2nd and 4th accused persons on bond in the following terms;

i. Bond of Kshs. 500,000= with one surety of similar amount.

ii. The accused persons shall report to their nearest police station on 10th of every month commencing on 10th of **December, 2016**.

Orders accordingly.

DATED AND DELIVERED AT MACHAKOS THIS 16TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Machogu for State

Mr. Ngolya holding brief for Muia for 2nd accused

Mr. Ngolya holding brief for Mwangangi for 1st accused

M/S Koech holding brief for M/S Wambua for 3rd accused