



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

**CRIMINAL CASE NO. 12 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**BENSON MUVEVI KYEVA.....ACCUSED**

**RULING**

1. The applicant, **BENSON MUVEVI KYEVA** was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap. 63) Laws of Kenya.

The Applicant pleaded not guilty.

2. The Applicant has applied for bail/bond pending the hearing and determination of the trial.
3. It is stated in the affidavit in support that the applicant is a responsible citizen. That he is married with children and is the only breadwinner for his nuclear family and also the extended family. It is further deposed that the applicant has a permanent place of abode in Mitasyano village, Nthongoni Location Mtito Andei within Makueni County. That prior to his arrest he used to carry out business in Ukunda area of Mombasa. The Applicant undertakes to abide by the terms of bail/bond. It is contended there are no compelling reasons why the applicant should not be released on bail.
4. The application is opposed. According to the affidavit in reply, the applicant has already been supplied with witness statements and is therefore aware of the evidence against him and the weight of the prosecution case. The prosecution is apprehensive that the applicant may be tempted to interfere with witnesses as they hail from the same village. It is also feared that the applicant may pose a security threat to the prosecution witnesses. The severity of the sentence for the serious charge of murder is another ground raised by the prosecution as likely to give the applicant the incentive to jump bail.
5. During the hearing of the application, the Applicant's counsel relied on written submissions. The learned counsel for the state relied on their replying affidavit.
6. I have considered the application, the reply of the same and the pre-bail report by the probation officer. The report is favourable.
7. I have considered **Section 49 (1)** of the **Constitution** which provides 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.”***

8. 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 behaviour 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.

9. 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). The provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.

10. There are no reasons given in support of the assertion that the Applicant is likely to interfere with witnesses e.g. has the Applicant threatened or accosted any witness or tried to dissuade or compromise any witness against testifying? There is no such evidence.

11. I allow the application on condition that the Applicant should not either directly or indirectly contact any of the prosecution's witnesses. The Applicant may be released on a **Kshs. 1 Million** personal bond with one surety of a like sum

**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 12<sup>th</sup> day of May 2015

**B. THURANIRA JADEN**

**JUDGE**