



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE NO. 29 OF 2015**

**KEZIAH WANJIRU MBUGUA.....3<sup>RD</sup> ACCUSED/APPLICANT**

*versus*

**REPUBLIC.....COMPLAINANT/RESPONDENT**

**WYCLIFFE AMIDA alias VINNIEY.....1<sup>ST</sup> ACCUSED/RESPONDENT**

**JOSEPH MUTUA NZOMO alias MUKAMI**

**Alias JOSEPH MUNYOKI NZOMO..... 2<sup>ND</sup> ACCUSED/RESPONDENT**

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**RULING**

1. **KEZZIAH WANJIRU MBUGUA** (3<sup>rd</sup> Accused) is jointly charged with two(2) others, **WYCLIFF AMIDA** alias VINNIEY (1<sup>st</sup> Accused) and **JOSEPH MUTUA NZOMO** alias Mukami (2<sup>nd</sup> Accused) with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. In her application dated 29<sup>th</sup> April 2015 she seeks to be released on bail pending trial.
3. The application is premised on grounds that the applicant is in employment and if not released on bail will lose her job. She is unwell suffering from ulcers and not a flight risk. She has no capacity to interfere with any further investigations and is willing to assist when called upon. She is innocent until proved guilty and it is in the interest of justice to be released on bail.
4. In an affidavit in support of the application she deponed interalia that her health is at stake. She is a law abiding citizen who understands the obligation to attend court.
5. In his oral submissions counsel for the accused 3/applicant reiterated the fact that the accused has a constitutional right to be released on bail and the terms to be imposed should not be punitive.
6. In a response thereto, to Mr. Shijenje counsel for the state did not oppose the application. He stated that the investigation officer was in court and had no good reason to oppose the accused's release on bail.
7. This court considering the fact that the accused is jointly charged with others sought to know whether her co-accuseds could also be released on bail. In response thereto the investigation

officer No. 68898 corporal Peter Wafula deposed as follows:-

***“5. That so far as the investigating officer, I am yet to see any application for bond by the 1<sup>st</sup> and 2<sup>nd</sup> accused and as such I have no reason to inquire into their details especially if they have any fixed place of abode, hence possibility to trace them should they abscond.***

***6. That the foregoing notwithstanding, I am aware that the 2<sup>nd</sup> accused/respondent herein jumped bail in respect of Machakos Chief Magistrate Criminal case No. 450 of 2013 which is readily available for inspection and verification by this Honourable court, and for those reasons there is likelihood that he may abscond again if released on bond.***

***7. That from my investigations, there is sufficient leads placing the 1<sup>st</sup> and 2<sup>nd</sup> accused at the scene of the crime.***

***8. That in the commission of the said crime herein, 2 more persons were shot and are still recuperating.***

***9. That as soon as the said 2 victims recover and have their P3 forms ready, I shall prefer more charges against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.***

***10. That the prospects of more charges against the 1<sup>st</sup> and 2<sup>nd</sup> accused may be motivation enough for them to take flight once released on bond in this matter.”***

8. Bail pending trial is a constitutional right unless there are compelling reasons to deter the court from granting the same. To exercise the discretion to grant bail there are considerations the court must have in mind. In the case of **Mogotsi & Another V the State 1990 BLR 142 (HC)** it was stated that:

**“Relevant factors the court should take in mind in considering application for bail are:-**

- ***The nature of the charge, the more serious the charge, the greater the incentive for the accused person to abscond.***
- ***The strength of the prosecution’s case.***
- ***The accused’s failure to surrender to bail on previous occasion;***
- ***The accused must have a settled address.***
- ***Whether the sureties are independent or are likely to be identified by the accused.***
- ***The likelihood of the accused interfering with the police witnesses.***

9. In exercising the discretion to grant bail herein I must remember not to deprive the applicant of her liberty and act judicially and cautiously. The affidavit deposed by the Investigation Officer reveals that the 2<sup>nd</sup> accused may have been a fugitive in law as it is alleged without evidence that he jumped bail in another case. It is stated that in the cause of commission of the crime that the applicant is also accused of, two (2) more persons were shot and are still recuperating whereby more charges will be preferred, although the officer contradicts himself by blaming accused 1 & 2 while he is silent in regard to the applicant.

10. The mystery surrounding averments made by the Investigation Officers calls upon this court to act cautiously.

No evidence of sickness of the applicant has been adduced. In the premises it behooves upon me to set stiff bail terms for the applicant.

11. I therefore grant the applicant bond of Kshs. 10 million with a surety in a similar sum.

12.It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 3<sup>RD</sup> day of JUNE, 2015.**

**L.N. MUTENDE**

**JUDGE**