



**REPUBLIC OF KENYA**

**HIGH COURT AT VOI**

**MURDER CASE NO 14 OF 2014**

**REPUBLIC .....PROSECUTOR**

**=VERSUS=**

**SAMUEL MBOI PAUL.....1<sup>st</sup> ACCUSED**

**MWANZIA PAUL.....2<sup>nd</sup> ACCUSED**

**RULING ON BAIL APPLICATION**

The two accused face a murder charge contrary to Section 203 as read with Section 204 of the Penal Code Cap 63.

The accused trial commenced on 10<sup>th</sup> June 2015. After the evidence of three prosecutions witnesses had been adduce the learned counsel for the accused Mr. Mwanyumba applied for the accused to be released on bail.

It was submitted that even though offence they face is bailable both accused had been in custody since their apprehension over this offence in June 2014.

Accused learned counsel submitted that the court was knowledgeable of the family background of the accused having received the evidence of the accused father.

Both accused are brothers, 2<sup>nd</sup> accused being older than the 1<sup>st</sup> accused. PW2 Paul Ngei Munyao is their father.

I need to state that the court received probation reports on both accused, which are dated 25<sup>th</sup> July 2014. Those report show that the accused just like many other young men of their area, Nakrutoin Taveta, dropped out of school at very young age to go to join in the business of quarry. Both accused dropped out of primary school to engage in that business.

The probation report shows that the accused family resides on a two acre piece of land at Nakruto but do not hold title for that land. The land is yet to be adjudicated. They carry out subsistence farming thereon.

The accused family is acquainted with the family of the deceased. According to the probation report the deceased family had come to terms with the death of the deceased and were not a versed to the release of the accused on bail.

There is no doubt that the information provided as seen above is all positive to the granting of the

accused bail. The prosecution did not oppose the application, but learned counsel Mr. Sirima in making that concession stated that the court should warn PW2 Paul Ngei, the father of the accused not to intimidate witnesses in this case. Indeed learned counsel had earlier made a request, off the court record, that the court do ensure to hear the evidence of PW3, Rose Joyce Chawucha, because she was receiving threat related to the evidence she was due to adduce before court.

### **COURT'S ANALYSIS**

The guiding provision on the court's consideration of an application for bail is to be found in Article 49 (1) (h) of the Constitution of Kenya, which provides:

***“An arrested person has the right -***

***(a).....***

***(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released”.***

A case that properly captures those provisions in the Constitution is **JOB KENYANYA MUSONI V REPUBLIC (2012) eKLR** decided by **Justice C. W. Githua** when she stated thus:

*“ I wish to conclude by borrowing the words of J. Ibrahim (as he then was) when he stated in **Republic -Vs- Danson Mgunya & Another [2010] eKLR** that -*

***“Liberty is precious and no one's liberty should be denied without lawful reasons and in accordance with the law. Liberty should not be taken for granted.....”.*** “

I am conscious of those provisions of the right of an accused person to be released on bail. I have also taken into consideration the positive remarks made by the probation officer.

As much as there is that right, the granting of bail is always at the discretion of the judge. In exercising that discretion the information that some witnesses have been intimidated not to testify in this case has laid heavily on my mind as I considered this application. It is an accepted principle in law that bail will not be granted where there is a possibility an accused being an agent of undermining the integrity of the criminal justice system, for example, intimidation of witnesses, (see the judiciary Bail Bond Policy Guidelines).

**It is for that reason that I reject the bail application by the accused. Liberty is hereby granted to the accused to make fresh application for bail, but only after the prosecution has closed its case.**

**It is so ordered.**

**Dated and delivered in Voi on 11<sup>th</sup> day of June 2015**

**MARY KASANGO**

**JUDGE**

Coram

Before Justice Mary Kasango

C/A Kavuku

For DPP:

For Accused:

Ruling read in their presence/absence in open court.

MARY KASANGO

JUDGE