



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 70 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

FAITH LEMOMO.....ACCUSED

RULING

1. By an application dated **4th February, 2015**, **Faith Lemomo** hereinafter “the Applicant/Accused” seeks to be released on bail pending trial. The application is premised on grounds that the Applicant has been in remand for a long period which constitutes an infringement of her constitutional right to bail; **Article 49(1)(h)** of the **Constitution** stems from **Article 50(2)(a)** which provides that an accused person has the right to be presumed innocent until proven guilty; the Applicant is a Kenyan Citizen with strong ties to the community and is not a flight risk.
2. The Applicant swore an affidavit where she deposed that she is married with five (5) children of tender years aged between twelve (12) and two (2) years; she has high blood pressure, her health has been deteriorating; she is the sole breadwinner of her family as her husband has another family that he takes care of.
3. In response thereto, the State through **No. 62318 P C Meshack Mumo** opposed the application on grounds that: If convicted the applicant will face a death sentence; due to the severity of sentence to be imposed the applicant will be tempted to abscond; and that the applicant has been supplied with statements which indicate particulars of witnesses therefore she may interfere with them.
4. The Applicant’s Advocate **John Ndungwa Kimeu** filed a supplementary affidavit where he deposed that the applicant is not a flight risk and she will not interfere with witnesses.
5. The Applicant is charged with the offence of murder that is bailable unless there are compelling reasons to have the accused incarcerated. The paramount consideration in granting bail is whether the accused person will turn up for trial. However, there are other considerations like interference with witnesses that the court must take into account. The party who makes such an allegations must therefore demonstrate that indeed there is an intention on the part of the accused person to do so.
6. In his affidavit the Investigation Officer stated thus:

“The prosecution has supplied the Applicant with the relevant statement as required indicating the witness particulars thus they may interfere with witnesses.” (Emphasis mine).

7. The averment made clearly indicate that the deponent was not certain. He was speculating as to what may happen. There is nothing to suggest that the witnesses have a relationship with the Applicant; or that she may threaten or intimidate them. Denying her bail on unfounded assertions may violate her right to bail.

8. From the foregoing it is apparent that there is no compelling reason why the Applicant should be denied bail pending trial. Consequently, she may be released on **bond of Kshs. 1,000,000/=** with a surety in a like sum.

9. It is so ordered.

Dated at Kitui this 16th day of November, 2015.

L. N. MUTENDE

JUDGE

Dated, Signed and Delivered at Machakos this 2nd day of December, 2015.

P. NYAMWEYA

JUDGE