



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO.117 OF 2013**

**LUKE NZIOKA MALONZA ALIAS LUKA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The application for bail by the accused **Luke Nzioka Malonza** alias **Luka**, is opposed by the State on three main grounds to wit:- that he is a flight risk; that he is likely to interfere with witnesses; and that if released he may be a danger to himself as he may be harmed by members of the public.
2. I will address the third ground first. **No.37885 PC Simon Mokaya** (the investigating officer in the case) avers at Paragraph 7 of the Replying Affidavit that the applicant was arrested by members of the public and handed over to the police. He also avers that if the applicant is seen walking free in the area; he may be harmed by members of the public.
3. From the averments above, I fail to appreciate the conclusion that the applicant will be harmed if released. In my view, if members of the public were that irrational they would have harmed the applicant at the time of arrest. In the Investigating Officer's own words, they arrested him and handed him over to the police. It is therefore unlikely in my view that the same members of public would turn around several months later, when emotions must have cooled, and harm the applicant. Following this reasoning, I must dismiss this ground as far-fetched.
4. The second reason advanced by the State is that the applicant is likely to interfere with witnesses. This is contained at paragraph 6 of the Replying Affidavit of **PC Symon Mokaya**. He deposes that some of the eye witnesses operate businesses around Buruburu shopping centre and that the accused may interfere with them or even sabotage their businesses.
5. From the material placed before me, I do not find this averment supported in any way. It appears from the covering report however that the accused and the deceased carried out business in the same area. If that is the case, there is a higher possibility of the witnesses who saw the applicant beating the deceased, and who, in the Investigating Officer's own averment arrested and handed the accused over to the police, desiring to see that justice is done in the case. I therefore fail to see the likelihood of interference under those circumstances. Consequently, I do not find the submission of the State in this regard convincing.
6. The final ground raised by the State is that the applicant was likely to abscond trial. It is the averment of Investigating Officer that the applicant fled from the scene after learning that the deceased had passed on. This averment was strongly argued by the prosecuting counsel who urged the court to consider that the applicant may disappear again if released.
7. Defence counsel on the other hand submitted that the applicant lives in Umoja, has a family and will attend court whenever required. I have considered the rival affidavits and submissions on this issue. I find, considering the antecedent of the applicant that he went into hiding for three months after the alleged offence, that he is likely to abscond and not attend his trial. It is to be

remembered that the primary consideration for bail is whether or not the accused will attend trial.  
8. In the circumstances of this case, I am not persuaded that the accused will not abscond. This, I find, is a compelling reason to deny him bail. His application dated 8<sup>th</sup> January 2014 is thus dismissed. He shall remain in custody pending his trial.

**Ruling delivered, dated and signed at Nairobi this 15<sup>th</sup> day of May, 2014**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For accused/applicant

.....: For the State/respondent