NO. 378/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO.26 OF 2009

ANN MUTHINI MBUSI …..... ACCUSED/APPLICANT

VERSUS

REPUBLIC ……..... RESPONDENT

R U L I N G

1. The application dated **20th May 2014** is for bail pending trial. It is supported by an affidavit deponed by the applicant/Accused, **Ann Muthini Mbusi** whereby she deposes that there are no compelling reasons that would work against her release on bail which is a constitutional right; she is willing to abide with any conditions that the court will impose and her sister, **Josephine Mukai Kinyanjui** is ready and willing to accommodate her at her place of residence in **Karuia Kiambu.**

2. In response thereto the state relied on an affidavit deponed by No. 69408 **P.C. Benjamin Maundu** who stated that the applicant having been supplied with the prosecution witnesses' statements was aware of the strength of the prosecution's case; the accused resides at **Kituti** in **Mutomo** where the witnesses reside; her release on bail would pose a security threat to the witnesses; there was a likelihood of the applicant/accused tampering with witnesses which is prejudicial to the prosecution's case. He also stated that considering the seriousness of the offence and the sentence to be meted out of death, the applicant was likely to abscond.

3. Relevant factors I should consider in such an application will be:

   i. Seriousness of the charge being an incentive for the accused person to abscond.
   ii. The strength of the case.
   iii. The likelihood of the accused interfering with the prosecution witnesses. ***(See Magotsi and Another versus The state 1990 BLR 142 (HC).***

4. This court appreciates the fact that murder is a bailable offence. The duty is upon the state to demonstrate that the appellant will interfere with the prosecution's witnesses if released. That was the only purported compelling reason given by the investigating officer. **Six (6**) witnesses have testified in this case, the only remaining prosecution witness is the Doctor who conducted the post-mortem on the body of the deceased. The allegation that the applicant will be a threat to the prosecution witnesses is therefore baseless. In the premises no good reason has been given why the accused should be incarcerated when the offence is bailable.

5. In the result I do grant her bond of **Kshs. 1,000,000/=** with a surety in a similar sum.

6. It is so ordered.

DATED, SIGNED and **DELIVERED** at **MACHAKOS** this **8TH** day of **SEPTEMBER, 2014.**

L.N. MUTENDE

JUDGE