



No. 431/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 20 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOEL MAINGA MUTHEMBWAACCUSED

RULING

1. The application dated 27th June, 2014 is for bail pending trial. The appellant/accused seeks to be released on bail/bond on terms that the court may find necessary to impose. The application is based on grounds that:
 - a. The applicant is by law presumed innocent till proven guilty.
 - b. It is only fair and in the interest of justice that this application be granted.
 - c. The applicant will suffer irreparable harm by having stayed in custody before the determination of his case.
2. In a response thereto the State opposed the accused's release on bail. Relying on an affidavit deponed by **No. 76939, P.C. George Kamau** it was stated that if released the accused/applicant would target prosecution witnesses and interfere with them since he is their relative; the sentence to be meted out in case of a conviction is an incentive for him to abscond and that bail is not absolute.
3. Bail is a constitutional right. But where there are compelling reasons then it should be denied. The paramount issue the court should consider is whether the accused will turn up for trial. In the premises it is important to consider what else can be a compelling reason to deny an accused person bail. In the case of *Republic versus Joshua Kibet Cheriot & Co. HCR C. No. 6 of 2010* it was stated thus:-

“Compelling reasons in Article 49(1) (h) of the Constitutional are not defined. But, must to my mind, mean reasons that show or prove that it is not in the interest of justice to release the accused persons on bail... the reasons on opposition to bail or bond must be cogent and must leave no doubt that justice will suffer if an accused is released on bail or bond.”

4. In the case of *Alhaji Mujahid Dukubo- Asari versus Federal Republic of Nigeria* the court set out some essential criteria. *Justice Ibrahim Taniko Mohammed J.S.C* held that;-

“When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision. These criteria have been well articulated in several decisions of this court. Such criteria include among others the following;

- i. the nature of the charges***
 - ii. The strength of the evidence in the event of conviction.***
 - iii. the gravity of the punishment in event of conviction***
 - iv. The probability that the accused may not surrender himself for trial.***
 - v. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.***
 - vi. The likelihood of further charges being brought against the accused.***
 - vii. the probability of guilty***
 - viii. Detention for the protection of the accused.***
 - ix. The necessity to procure medical or social report; ending final disposal of the case”.***
5. The criteria alluded to in this particular case is interference with witnesses. It has been stated that witnesses expected to testify are the accused person’s relative. Consequently, the prosecution is apprehensive that the accused may suppress them. This would not be in the interest of justice. It would be just for the prosecution to call witnesses who are related to the accused prior to being granted the freedom of associating closely with them. In the circumstances the reason given warrants the accused being denied bail at this stage and I so order.
6. The application could however, be renewed soon after the key witnesses testify.
7. The application is hence disallowed.

DATED, SIGNED and DELIVERED at MACHAKOS this 5TH day of NOVEMBER, 2014.

L.N. MUTENDE

JUDGE