



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**Criminal Case 20 of 2012**

**REPUBLIC**

**VERSUS**

**JANE MUSENYA.....ACCUSED**

**RULING**

By a Notice of Motion dated 3<sup>rd</sup> April, 2012, pursuant to the Provisions of Section 124 of the Criminal procedure Code and Article 49 (1) of the Constitution of Kenya 2010, the applicant seeks orders:-

1. THAT this application is certified as urgent.
2. THAT owing to the urgency of the matter the application may be heard before the hearing of this matter.
3. THAT the honourable Court be pleased to grant bond terms and in the alternative cash bail so that the Application may be released from prison pending hearing.

The application is based on the grounds that:-

- (a) The Applicant was charged with Murder on 3<sup>rd</sup> day of December, 2011 vide High Court Criminal Case No. 20 of 2012
- (b) The Applicant has a Constitutional right to be released on bond or bail under Article 49(i) h of Constitution of Kenya, 2010 and on reasonable conditions.
- (c) The Applicant has a qualified constitutional right to be presumed innocent until the contrary is proved.

- (d) The Applicant will avail herself and attend the trial until its conclusion.
- (e) The Applicant is a Kenyan citizen who at all material times has resided in Kenya and undertakes to comply with bail terms in respect of attendance of court or otherwise.
- (f) The applicant belongs to a family residing in Kenya hence no intention of relocation from the country.

The application is predicated upon the annexed affidavit of Jane Musenya sworn on the 3<sup>rd</sup> day of April, 2012.

On behalf of the applicant, it was urged that he was arrested on 4<sup>th</sup> March, 2012 and detained in custody until the 14<sup>th</sup> March, 2012 when he was charged with the offence of murder.

That since his arrest and arraignment in court, he has been in lawful custody pending the hearing of her case scheduled for 3<sup>rd</sup> and 4<sup>th</sup> October, 2012.

That she has been advised by her advocate:

- (i) That the offence of murder is bailable under Article 49(1) of the Constitution of Kenya 2010.
- (ii) That she has a constitutional right to be released on bail/or bond on reasonable terms.
- (iii) That there are no compelling reasons within the meaning of Article 49(i) h of the constitution of Kenya 2010 as to why she should not be released on bail.

That her continued detention in custody gravely undermines her unqualified constitutional right to be presumed innocent until the contrary is proved.

Last but not least, that she undertakes to attend all court sessions when required to do so.

The application was opposed by the prosecution. In doing so reliance was placed on the replying affidavit of No. 42252 I P Hesbon Esendi. The applicant adopted the said affidavit in its entirety.

By way of submissions, I was urged by the respondent that on 7<sup>th</sup> December, 2011 a report was made by one Lucia Ngina Kimweli to Embakasi Police Station alleging that her husband, Josephat Kyanga Kimweli, was missing and all attempts to trace him were fruitless hence the desire to enlist the services of the police.

On the same day at about 5.00pm the police received a call from the youth chairman, one Hassan Njaru, that there was a house at Pipeline area which was locked but a foul smell was coming from inside. That upon attending the scene the police discovered that the missing person was the person whose rotting corpse was in the said house.

That the police commenced a man hunt for the accused who was the occupant of the house in vain. Subsequently she was arrested and charged with murder on 4<sup>th</sup> March 2012. Plea was taken on 19<sup>th</sup> March, 2012. Since then, she has been in custody awaiting her trial..

Last but not least, that she undertakes to attend court as and when required to do so.

I have carefully considered the evidence tendered by the applicant and the prosecution. Having done so, I note in passing that the alleged offence was committed on 3<sup>rd</sup> December, 2011. It took up to 14<sup>th</sup> March, 2012 to trace and arrest the applicant. She did not on her own volition report the incident to the police. It took members of the public three months to hunt for and get her. In the circumstances, I am of the view that the applicant is a flight risk. That is a compelling reason why she should not be released on bail.

By reason of the foregoing, I am disinclined to grant her bail and/or bond. She will stay in custody until the hearing and determination of her case.

Dated, signed and delivered at Nairobi this 3<sup>rd</sup> day of **July**, 2012.

**N R O OMBIJA**  
**JUDGE**