

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

MISCELLANEOUS CRIMINAL APPLICATION NO 9 OF 1990

JONATHAN MUNGAI WAINAINAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant Jonathan Mungai Wainaina applies to me by chamber summons under section 123(3) of the Criminal Procedure Code for bail pending his trial. He is charged with various offences in the Court of the Resident Magistrate at Kisumu and those offences would appear to arise from the circumstances surrounding the death of the Kenya's late Minister for Foreign Affairs and International Corporation. It is alleged in various charges against the applicant that in effect he took or attempted to take advantage of the circumstances of that death to make personal pecuniary gains for himself. Those allegations are of course no more than allegations at this stage because the applicant has pleaded not guilty to all the charges, but I think that the magistrate was entitled to take into account the circumstances out of which the charges arose and weigh them in whether or not the applicant should be granted bail. She did so and refused the applicant bail and looking at the whole of the circumstances myself, I think the magistrate was right. It is even alleged against the applicant in one of the charges that he attempted to bribe a police officer and that attempted bribery would appear to have arisen from the circumstances of the other charges. That would lend weight to the prosecution's contention that the applicant is likely to interfere with the investigations. Mr Aluoch for the applicant has not gone so far as to say before me that bail must be granted in all circumstances. I am informed by the trial magistrate that the case of the applicant can be heard much earlier than the dates already given to it in July.

I refuse this application and order it dismissed and if Mr Aluoch for the applicant is so inclined, he and the prosecution can have the case mentioned before the trial magistrate with a view to getting earlier hearing dates for it.

Dated and Delivered this 30th Day of March, 1990

R.S.C. OMOLO

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JUDGE