



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO 16 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ALEX GITAHI MUCHERU.....ACCUSED**

**RULING ON BAIL**

1. The Accused in this case, **ALEX GITAHI MUCHERU**, is charged with *murder* contrary to **sections 203 and 204** of the *Penal Code*. It is alleged in the information dated 29/08/2019 that in the night of 29<sup>th</sup> and 30<sup>th</sup> July 2019 in Waguthiru Village in Laikipia Central Sub-County within Laikipia County, he murdered one **ELIZABETH WAITHERA GITAHI**.
2. On 09/10/2019 the Accused pleaded not guilty to the charge. Due to the Covid-19 situation in the country his trial has not yet commenced; it is scheduled to start on 31/05/2021. In the meantime he has asserted his constitutional right to be admitted to bail.
3. The Republic has opposed bail for two reasons; one, that the Accused is a clear and present danger to prosecution witnesses, particularly one **JOHN MAINA GITAHI**, and might harm them if admitted to bail; and secondly, that the Accused himself would be in danger from members of the public if released back to his community before the case is tried and determined. There is an affidavit by the investigating officer of the case, **SGT ADAN ROBA** and another one by the aforesaid John Maina Gitahi, both sworn in opposition to bail and filed on 23/10/2019.
4. The Accused has sworn an affidavit (filed on 03/03/21) denying the allegations of the likelihood of him interfering with any prosecution witness, and also asserting his constitutional right to bail.
5. I have considered the three affidavits and the submissions of the learned counsels appearing. I have also perused the witness statements and documentary evidence supplied by the prosecution to the Accused and to court. It turns out that the Deceased was the Accused person's grandmother. The witness John Maina Gitahi is the Accused's uncle. There are other prosecution witnesses who are closely related to the Accused and the Deceased. The witness statements disclose a history of bad relations between the Accused and his uncle John Maina Gitahi.
6. Bail pending trial is now a constitutional right that will be denied only for compelling reason; and any conditions that the court might impose for such bail, again by constitutional edict, must be reasonable. See *Article 49(1) (h)* of the *Constitution of Kenya, 2010*. It is also to be noted that an accused person is presumed innocent, and must remain so presumed, unless and until he is proven guilty to the required legal standard.
7. I am persuaded on balance by the material now before the court that if released on bail the Accused will be a clear and present danger to his uncle John Maina Gitahi, one of the prosecution witnesses, and very possibly to other witnesses as well. This is a compelling reason to deny him bail.
8. The Accused shall therefore remain in custody until his trial is concluded. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 27<sup>TH</sup> DAY OF APRIL 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 29<sup>TH</sup> DAY OF APRIL 2021**