



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 15 OF 2017**

**REPUBLIC .....PROSECUTION**

**VERSUS**

**CATHERINE WAWIRA NJAGI Alias WAMBETI.....ACCUSED**

**R U L I N G**

1. This is a ruling on a notice of motion dated 6/12/2017 seeking bail pending hearing and determination of the case. It is supported by the affidavit of Catherine Wawira Njagi the applicant.
2. The applicant was represented by Ms. Muriuki who opted to wholly rely on the affidavit of the applicant.
3. It is deposed that the offence the applicant is charged with is bailable under the constitution unless there are compelling reasons. That the applicant enjoys the presumption of innocence awaiting the trial of the case. She will be ready and willing to abide by an terms or conditions given by the court.
4. Further that this case may take long to be determined thus subjecting the applicant to lengthy incarceration unless she is granted bail.
5. The application was opposed by the respondent relying on the affidavit of the investigating officer Cpl. Paul Irungu. He deposes that the applicant stabbed the deceased to death and fled to an unknown place. It took the police about four (4) months to trace and arrest her. The applicant was arrested in the home of a witchdoctor who was keeping her with a view of helping her to evade arrest.
6. Secondly, it was argued that the applicant has absconded in two other cases after being released on bond, that is Criminal case No. 619 of 2016 and No. 62 of 2017. The applicant is a habitual offender and given her history she is most likely to abscond in this case.
7. In response to the contents of Cpl. Irungu's affidavit, Ms. Muriuki for the applicant argued that there is no evidence to show that the applicant absconded in two other cases and that police were looking for her. If that was the scenario, police would have applied for a production order in this case.
8. The Constitutional Article 49(h) provides that any accused or arrested person is entitled to bond unless the prosecution presents compelling reasons not to release him/her. Bail is therefore at the discretion of the court depending on the facts of each case.
9. The issues for determination is whether the reasons given by the prosecution not to release are compelling. The evidence of Cpl. Irungu was on oath that the applicant has absconded in two other criminal cases whose particulars were given.

10. If this was not true, the applicant ought to have sworn an affidavit to controvert the allegations which were of serious nature considering that the prosecution were geared towards demonstrating compelling reasons. In view of the failure to challenge the evidence on oath, the same remains controverted.

11. The fact that the applicant absconded in two other criminal cases enhances the likelihood of jumping bail in this case if this application is granted.

12. With three criminal cases pending before the court, the applicant may not be referred to as a habitual offender. This is for the reason that she is presumed innocent till proven guilty. However, the jumping bail negates her plea that she will abide by all the conditions that this court may impose in granting bail.

13. The history of the applicant does not favour her in this application. The evidence that she took flight after the incident that led to this offence, makes it highly probable that if granted bail, she may abscond to defeat the operation of the law. This may lead to the deceased's family who lost one of their own losing the opportunity to have their right of justice.

14. It was argued that police would have applied for a production order in this case. One of the cases is for the year 2016 while this case was registered in 2017. It was therefore not possible for the police to get the applicant through a production order in respect of Criminal Case No. 619 of 2016 which came earlier than the one before this court. The second case was No. 62 of 2017 and it is not possible to tell whether it was registered before or after this one.

15. I find the reasons given by the prosecution compelling. This application must therefore fail and it is accordingly dismissed.

16. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 21ST DAY OF FEBRUARY, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Muriuki for applicant**

**Ms. Mate for respondent**