



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO 15 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LABAN KAMAU KIARIE.....ACCUSED**

**RULING**

1. The Accused in this case, **Laban Kamau Kiarie**, is charged with *murder* contrary to **section 203 as read with section 204** of the *Penal Code*. It is alleged in the information, undated but filed on 17/06/2014 that on diverse dates between 27<sup>th</sup> and 29<sup>th</sup> May 2014 at an unknown time in Kigio Sub-location in Gatanga District within Murang'a County, he murdered one **Margaret Wanjiku Kamau**. He pleaded not guilty to the charge. His trial has been ongoing and six prosecution witnesses have testified so far. The case comes up for further hearing on 03/07/2017.

2. In the meantime the Accused has applied **notice of motion dated 27/05/2016** to be admitted to bail. The Republic has opposed the application by a **replying affidavit filed on 31/03/2017**. It is sworn by one **Cpl. Urbanus Kivindy**, the investigating officer of the case.

3. Bail pending trial for any criminal offence is now a constitutional right that will be denied only for compelling reason. Any condition for such bail the court might impose, again by constitutional edict, must be reasonable. See **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

4. Bail has been opposed upon the following grounds –

(a) That the Accused is a flight risk “since his home particulars are unknown and it will be difficult to trace him should he abscond”.

(b) Apprehension that the Accused is likely to interfere with the remaining prosecution witness “through intimidation; threats and any other form of influence...”

(c) That because of the “overwhelming evidence” so far laid before the court, it is “highly likely” that the Accused may abscond.

5. Lack of full home particulars cannot be a compelling reason to deny anyone bail, and certainly not in the particular circumstances of this case. Such particulars can be obtained from the Accused as a condition for his release on bail.

6. As for the other grounds given by the investigating officer in his replying affidavit, they are merely speculative and not based on fact. There is no affidavit by any witness alleging any intimidation or threat from the Accused. Apprehension that is not based on fact on the part of the investigating officer is not compelling reason.

7. As for the argument that there is already “overwhelming evidence” laid before the court, that also cannot amount to a compelling reason to deny the constitutional right to bail.

8. I have perused the witness statements and other documents supplied to the Accused and to court by the prosecution and have noted the circumstances in which the alleged offence was committed. I do not

find in them any compelling reason to deny the Accused bail.

9. I will in the circumstances allow the application and admit the Accused to bail. He shall be released upon his own cognizance in the sum of KShs 1 million plus one surety in like sum. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 4<sup>TH</sup> DAY OF MAY 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 19<sup>TH</sup> DAY OF MAY 2017**