



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

Criminal Murder No. 5 Of 2016

REPUBLIC.....PROSECUTOR

VERSUS

LUCY SIGARA.....ACCUSED

RULING

1. On the 24th February 2016, the accused person herein Lucy Sigara made her first appearance in court. On the 2nd March, 2016 she denied the charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence against her are that on the 21st day of February, 2016 at Nyamagwa Sub-location in Sameta Sub-County within Kisii County she murdered Emmanuel Sigara.
2. As she awaits trial, the accused person's counsel Mr. Okemwa prays that she may be released on bond. Pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya, 2010** an accused person has a "**right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be so released.**"
3. What is clear from the provisions of **Article 49 (1) (h)** (supra) is that unlike under the old constitutional dispensation where an accused person had to show cause why he should be released on bond, it is now the sole responsibility of the State to show cause why an accused person may not be released on bond or bail.
4. In the instant case, Mr. Otieno the prosecution counsel told the court that according to the information he has received from the Investigation Officer (I.O) in this case, there were no compelling reasons why the accused person herein may not be released on bond or bail.
5. In considering an application of this nature, the primary factor to be taken into account is whether the accused person shall turn up for trial once she is released on bond. See Sitati J's holding in the case of **Republic -vs- Abel Moranga Nchore- Kisii HCCR Murder No. 137 of 2013** (unreported). Whether the accused will turn up for trial is hinged on other factors such as the likelihood of the accused person interfering with witnesses and the risk of the accused absconding. It is the sole duty of the state to prove to the satisfaction of the court that it would be unsafe to release the accused person on bond or bail.
6. In the instant case, no such reasons have been advanced by the State. I therefore have no reason to deny the accused person the order she seeks.

Accordingly, the application is hereby allowed on the following terms:-

1. *The accused may be released on his own bond of Kshs. 500,000/= (Kenya Shillings Five) with 2 sureties of a like amount. The sureties shall be approved by the DR of this Honourable Court.*
2. *Once she is released on bond, she shall appear in court whenever she is required to do so by*

the Honourable Court until the case is heard and determined or until further orders of this Honourable Court.

3. *In default of (2) above, the bond shall be cancelled immediately and the sureties taken to account.*
4. *Mention on 21/04/2016.*

Delivered, dated and signed in at Kisii on 22nd day of March, 2016.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for prosecutor

Mr. Okemwa for accused

Mr. Omwoyo- Court Clerk