



**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL CASE NO 19 OF 2012**

**(FORMERLY NYERI HCCR APPEAL NO 52 OF 2009)**

**PAUL MACHARIA MWARAGU.....ACCUSED**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. The Accused in this case, **Paul Macharia Mwaragu**, is charged with **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged that in the night of 23<sup>rd</sup> and 24<sup>th</sup> July 2009 in Karurumo Sub-location in Murang'a West District within Central Province, he murdered one **Lisiviah Nyambura**. On 26/11/2009 he pleaded not guilty to the charge. On 15/11/2012 the case was transferred to this court before trial of the Accused commenced.
2. On 08/04/2013 the Accused's trial commenced before Ngaah, J. Eight (8) prosecution witnesses testified before the Judge. It appears that about 4 witnesses remain to testify for the prosecution.
3. On 02/03/2016 this court (Waweru, J) directed that the trial of the Accused do proceed from where it had reached, and I heard one more witness for the prosecution. The case is scheduled for further hearing on 15/08/2016.
4. In the meantime the Accused has applied by **notice of motion dated 02/03/2016** to be admitted to bail pending conclusion of his trial. The Republic has opposed the application by a replying affidavit sworn by one CI Simon Too, the investigating officer of the case, filed on 17/05/2016. The grounds for opposing bail are stated to be –
  - i. That the Deceased's parents are afraid that the Accused may harm them if released on bail.
  - ii. That the Accused in fact threatened the life of the Deceased's father, Geoffrey Mugo, when the Deceased was admitted in hospital before she died.
  - iii. That the Accused has a history of violence.
5. I have considered the submissions of the learned counsels appearing. Bail pending trial is now a constitutional right that will be denied only for compelling reason; and any condition for such bail that the court may impose must be reasonable. See **Article 49(1) (h)** of the **Constitution of Kenya, 2010**.
6. I note that most of the prosecution witnesses have already testified, including those that are said to fear for their lives should the Accused be admitted to bail. In any event, there is no affidavit by any of these

witnesses: the say-so of the investigating officer is not sufficient as it amounts to hearsay.

7. I also note that the trial of the Accused has taken an inordinately long time to complete. His constitutional right to trial within a reasonable time appears to have been violated.

8. In these circumstances I will allow the application. The Accused shall be admitted to bail upon his own cognisance in the sum of KShs 500,000/00 plus one surety in like sum. It is so ordered.

**DATED AND SIGNED AT MURANG'A ON THIS 23RD DAY OF JUNE 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 24<sup>th</sup> DAY OF JUNE 2016**