



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. 96 OF 2015**  
**REPUBLIC .....PROSECUTOR**  
**VERSUS**  
**SILAS MUGOYE LUGALIA ..... ACCUSED**  
**RULING**

1. The Applicant **SILAS MUGOYE LUGALIA** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the night of the 19<sup>th</sup> day of September, 2015 at Baba Dogo Estate within Nairobi county murdered **GRACE WAHU**.
2. He pleaded not guilty to the charges and on 23<sup>rd</sup> May, 2016 his trial commenced before me and at the time of this ruling I had heard the evidence of two prosecution witnesses.
3. By an application dated 24<sup>th</sup> June, 2016 the applicant applied to be admitted to bond pending further hearing which application was supported by his sworn affidavit wherein it was deponed that he is a young man who was working as a painter and that he was arrested on 20<sup>th</sup> September, 2015 in respect of a crime which allegedly took place on the evening of 19<sup>th</sup> September, of which he was aware of and did not run away which shows that he is not a flight risk.
4. It was deponed further that before his arrest he was leading a simple life and engaged himself in income generating activities and therefore ought to be released on bond to enable him continue with his said activities. It was stated that the intended prosecution witnesses were personally unknown to him and further that he undertook not to interfere with any of them.
5. In response to the said application the prosecution filed a replying affidavit through IP Evans Chea in which it was deponed that the applicant did not qualify to be admitted to bail since the same was charged with a serious offence of murder and therefore the temptation to abscond the jurisdiction of the court was real since the prosecution had a strong and irrefutable evidence against the same as he was the last person with the deceased when she met her death.
6. It was deponed further that there was a risk of intimidation of the prosecution witnesses since they stay together with the accused person within the same compound.

**SUBMISSIONS**

7. On behalf of the applicant Mr. Ruiru submitted that if granted bail the accused person intended to

relocate back to his rural home and that the serious nature of the offence the accused is charged with is not a consideration on whether to grant or deny bond under the provisions of Article 50 of the Constitution. In support of the submission herein reliance was placed on the High Court of Kenya at **Nanyuki Criminal Case No. 4 of 2016** in which Justice Mary Kasango stated as follows:-

***“9.) The Constitution, Article 49(1) (h) provides an arrested person shall be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.***

***10.) The purpose for which bail is granted pending trial is to avoid inflicting punishment to those who are innocent and who after trial, may be acquitted. That principle was captured in a Botswana case MUGOTSI and another v THE STATE 1990 BLR 142 (HC) where it was stated:***

***‘the practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongfully accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defence.’***

***11.) The Constitution, under Article 49(1)(h) provides that an arrested person should only be denied bond or bail if there are compelling reasons. The Oxford Advance Learners Dictionary, 7<sup>th</sup> edition defines the word ‘compelling’ as something so strong that you must do something about it.”***

8. On behalf of the prosecution Mr. Mwendu submitted that the applicant was arrested by members of the public who broke his door and entered into his house to effect the arrest. It was submitted that there is another suspect at large and therefore if the accused is released on bond there is a likelihood of the applicant interfering with the said suspect. It was submitted that there were three named witnesses who should testify first before the applicant is released on bond.

### **ANALYSIS AND DETERMINATION**

9. Bond is now a Constitutional right of every accused person which can only be limited where there are compelling reasons advanced by the State to enable the court to deny the same bond.

10. In this matter before me, I have heard the evidence of two prosecution witnesses which therefore make the case part-heard before me. From the evidence so tendered it is clear that the applicant now knows the nature and the scope of the prosecution case against him. I have taken into account the submissions by Mr. Ruiru that if released the accused intends to relocate to his rural home which submissions contradict the applicant’s contention that he should be released on bond so as to continue with his income generating activities. I have also taken into account the submissions by the prosecution that there are three named witnesses whose evidence needs to be secured before the accused is released on bond.

11. I am satisfied and find and hold that there are valid compelling reasons advanced to enable me deny the accused person the enjoyment of his Constitutional right at this stage. The accused shall therefore remain in custody until the three named prosecution witnesses testify upon which the same shall be at liberty to renew his bond application.

12. It is so ordered.

**DATED, DELIVERED and SIGNED at Nairobi this 23<sup>rd</sup> day of November, 2016.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Mwenda for the state*

*Mr. Ruiru for the accused*

*Accused present*

*Tabitha court clerk*