



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 65 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KELVIN KAMAU GATORA.....1<sup>ST</sup> ACCUSED**

**ISMAIL WAINAINA MUTHONI.....2<sup>ND</sup> ACCUSED**

**FLORENCE WANJIRU KAMAU.....3<sup>RD</sup> ACCUSED**

**RULING**

This is a ruling in respect of the application by the third accused person Florence Wanjiru Kamau. She is seeking to be admitted to bail pending the hearing and determination of this case. She is charged jointly with the 1<sup>st</sup> and 2<sup>nd</sup> accused persons with the murder of Stephen Karanja Karumba which is alleged to have occurred on 26<sup>th</sup> June 2015 at Ndunyu Market in Dagoretti with Nairobi County. The application is dated 17<sup>th</sup> November 2016. It is supported by the grounds on the face of the application and in the supporting affidavit sworn by the 3<sup>rd</sup> accused.

The grounds in support are that the accused has been in custody since June 2015 and that the hearing of the case has not commenced due to several adjournments in the instance of the prosecution; that she is ailing and on Anti-Retroviral drugs and is unable to receive good care in custody due to lack of proper diet and that she will obey and abide by the conditions of bail that this court will set.

The prosecution opposed the application for bail submitting that the offence the accused is facing is a serious one; that there is no evidence that the accused has a fixed abode and therefore she is a flight risk.

In response to the brief submissions by the prosecutor Mr. Saenyi for the accused submitted that seriousness of the offence has not been a compelling reason to deny an accused person bail and that the police have the particulars of the accused and know where she comes from.

I have considered the application. The Prosecution Counsel did not file a replying affidavit in support of her opposition to this application. She submitted from the bar.

Bail is a right that is guaranteed in the Constitution (see Article 49 (1) (h)). The right is not absolute and can be limited where compelling reasons are proved on a balance of probabilities. The allegations that the accused is a flight risk since she does not have a fixed abode have not been supported by evidence and remain just allegations. The prosecution counsel did not have a replying affidavit or any other evidence

verifying these allegations. Having considered her brief submissions I am not persuaded that there are compelling reasons to make me decline this application. Consequently, I will and do hereby allow the same on the following terms and conditions:

(i) The accused shall be released on a bond of One Million Kenya Shillings (Kshs 1,000,000) with one surety of similar amount.

(ii) In the alternative, the accused is at liberty to pay cash bail of Kenya Shillings Two Hundred Thousand (Kshs 200,000).

(iii) She will attend court on the days of hearings and mentions of this case and any other time that her attendance may become necessary as the court may order.

(iv) She is cautioned against doing anything that may amount to subversion of justice in respect of this case.

Orders shall issue accordingly.

**Dated, signed and delivered this 22<sup>nd</sup> December 2016.**

**S. N. Mutuku**

**Judge**