



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 7 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENARD LEMARA.....ACCUSED**

**RULING**

1. The accused Benard Lemara is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He is alleged to have murdered Naomi Cherutich on the 12<sup>th</sup> November 2014 at Mauche Trading Centre in Njoro subcounty within Nakuru County. He pleaded guilty and was remanded at the Nakuru G. K. Prison pending the hearing and determination of the case.

2. On the 18<sup>th</sup> February 2015, the accused's advocate Mr. Mugambi applied that the accused be released on bail/bond. The State sought time to respond to the application. On the 18<sup>th</sup> March 2015, the State indicated that it does not oppose the application to have the accused released on terms as the court may deem fit and just.

3. Article 49(1)(h) of the Constitution gives an arrested party 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 released.

4. Further Article 49(2) of the Constitution gives the court discretion to grant bail in all cases where the accused is charged with an offence punishable by fine alone or imprisonment for a period not exceeding six months.

5. In this case, the accused, if convicted shall be sentenced to the only sentence provided that is, death.

The right to bail under the Constitution is not absolute. It may be denied where there are compelling reasons, that are not provided for any where in our statutes. The courts have however promulgated criteria in various decisions. Among them are whether the accused is likely to abscond from the courts jurisdiction and whether or not he may interfere with witness.

6. As pointed out earlier, the prosecution does not oppose the application, and by implication, there are no compelling reasons to deny bail to the accused, as none have been advanced.

In the circumstances, this court shall exercise its discretion in the accused's favour and release him on bail, but upon the following terms, that he shall sign a personal bond of Kshs 350,000/= with one surety of similar amount, that he will not interfere with witnesses and that he shall attend court whenever required to do so. He will also attend court for mention of the case once every month until further orders of this court, and/or pending the hearing and determination of the case.

Mention on 22<sup>nd</sup> April 2015.

**Dated, signed and delivered at Nakuru this 27<sup>th</sup> day of March 2015**

**JANET MULWA**

**JUDGE**

**In the presence of:**

**Rugut** for the State

Morintant holding brief Mugambi for accused

Omondi - Court clerk