



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 95 OF 2008

SAMUEL WAINAINA KARIUKI... ..APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused, **Samuel Wainaina Kariuki** is facing trial for the murder of his wife **Anne Naisho Wainaina**. It is alleged that he committed the offence on the 5th of October, 2008 at **Orkinos Farm Kajiado District** in the **Rift Valley Province**. **Njiru Estate** in **Nairobi East District** within **Nairobi Province** murdered **Mueni Syombua Munuve**. He was first arraigned in court on 28th October, 2008 when he pleaded not guilty. His trial, however did not commence as scheduled on the 3rd of February 2009 as his defence counsel raised a preliminary objection on constitutional grounds that there had been delay in presenting the accused to court which warranted termination of the charge.

The objection was overruled on the 29th September 2009 when the court (Ochieng J.) directed the trial of the accused to proceed to its logical conclusion. The trial subsequently commenced on 23rd November, 2011 before Ombija J. who heard one witness before he ceased jurisdiction in the matter. Subsequently, the trial started *de novo* before the present court on 12th February, 2014. So far only one witness has testified.

On the 23rd October, 2014, the accused filed an application seeking to be released on bail pending the conclusion of his ongoing trial. He deposes in his supporting affidavit that he is a family man with three children who are in school and need his attention; that he has a qualified constitutional right to be released on bail on reasonable conditions; that he has a right to be presumed innocent until proved guilty; and that his continued detention pending conclusion of the trial gravely undermines and devalues his constitutional right to be presumed innocent; that he will not interfere with witnesses; and, that he shall attend his trial.

At the hearing of the application on 10th February, 2015, **Mr. Githinji** for the applicant submitted that the accused was entitled to bail under **Article 49(i) (h) of the Constitution** and had the right to be presumed innocent until proved guilty. He further submitted that the accused had two minor children who require his attention. He told the court that the deceased was the wife of the accused and that their minor children were facing hardship in the absence of both parents. He further submitted that the accused deeply loved his wife and had a cordial relationship with her before she died.

In her submissions, **Ms. Ikol** for the State opposed the application. While conceding that the accused was entitled to bail under the constitution, she urged the court to consider the circumstances of the offence. She submitted that the accused beat his pregnant wife to death and should be detained pending the finalization of his case. She further submitted that the accused's two children aged 6 and 2 years

respectively were being taken care of by the maternal grandparents. In response, **Mr. Githinji** urged the court to expunge the submissions of the State as there was no replying affidavit filed to oppose the application. He stated that the prosecution counsel could only submit on matters of law and not fact.

The constitutional basis of the application is not contested. The accused is by law entitled to bail unless there are compelling reasons not to be released. In the present application the accused has averred that he will attend his trial without fail. The State on the other hand has suggested that the applicant was a flight risk and may abscond trial. I note however that although the application was filed way back on 23rd October, 2014, the State did not file a replying affidavit opposing the same. This is despite the extension of time given twice to the State to file a replying affidavit if it so wished. I find the submissions by the prosecution counsel opposing the application therefore to be an afterthought. It appears to the court that the State has no serious ground of opposing the application. I further note from the record that although the accused actively delayed his trial after taking plea, the State has subsequently faced a challenge of presenting witnesses to the court. The failure of the State to prosecute the case expeditiously cannot be visited upon the accused.

In the circumstances, I find no compelling reason to deny the applicant bail. He is released on the following conditions:-

- i. He shall pay cash bail of One Million Shillings (Kshs.1Million) with two sureties of One Million each to be approved by the Deputy Registrar of the court.
- ii. Not leave the jurisdiction of this court without an order of the court.
- iii. Not to interfere with prosecution witnesses in any manner whatsoever.
- iv. Attend court for the mention of his case once every month. The first such mention shall be on 21st April, 2015.

Orders accordingly.

Ruling delivered and dated at Nairobi this 19th day of March, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

-: Court clerk
-: Accused/Applicant
-: For State
-: For Accused/Applicant