



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO 38 OF 2012**

**(FORMERLY NYERI HC CR CASE NO 5 OF 2012)**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN NJAMBUYA MAKURATHI.....ACCUSED**

**R U L I N G**

1. The Accused **Stephen Njambuya Makurathi** is charged with *murder* contrary to **section 203 as read with section 204** of the *Penal Code*. It is alleged in the information dated 9<sup>th</sup> February 2011 that on 03/02/2011 in Rurie Sub-location of Murang'a County he murdered one **Teresia Muthoni Makurathi**.
2. On 08/11/2011 the Accused pleaded not guilty at the High Court, Nyeri where this case was before it was transferred here by an order entered on 21/11/2012. It has since been fixed for hearing a number of times, but for one reason or the other hearing has never commenced. Hearing is now scheduled to commence on 29/09/2015.
3. The Accused had filed an application for bail way back in April 2013 (**notice of motion dated 15/04/2013**).The application was finally prosecuted on 21/07/2015. This ruling concerns that application. Learned Prosecution Counsel informed the court that the Republic does not oppose the application.
4. I have perused the witnesses' statements and other documents supplied to the Accused and to the court by the prosecution, and have noted the circumstances of the alleged offence. The Deceased was the Accused's mother. He was her last-born child living with her. He is alleged to have gone into hiding after commission of the alleged offence, though he was very soon found and arrested. I also note that some of the witnesses are the Accused's siblings and other close relatives.
5. The court has not been told where the Accused is likely to live if he is released on bail, and whether there will be contact between him and his siblings, and what their feelings about his release on bail might be.
6. The Accused must of course be presumed innocent until and unless he is proved guilty beyond reasonable doubt. It is also the burden of the prosecution to prove his guilt. But I consider that there is a flight risk, given his alleged conduct after commission of the alleged offence, should he be released on bail. There may well be danger to his siblings, or indeed to himself, if released on bail, given the circumstances of this case.
7. I therefore find that there are compelling reasons to deny him bail pending his trial (**Article 49(1) (h)** of the *Constitution of Kenya, 2010* refers). He shall remain in custody. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 23<sup>RD</sup> DAY OF JULY 2015**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 31<sup>ST</sup> DAY OF JULY 2015**