



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.11 OF 2015**

**MARY NJOKI NG'ANG'A.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. **Mary Njoki Ng'ang'a** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the night of 14<sup>th</sup>/15<sup>th</sup> January 2015 at Marenga road, Kangemi, in Nairobi County, jointly with others not before the court murdered **James Ng'ang'a Ritho**. She took plea on 2nd February, 2015 and denied the offence. Her trial is set to start on 23<sup>rd</sup> May, 2016.

2. The accused has now applied to be released on bail pending trial. She asserts in her notice of motion and supporting affidavit filed through the firm of **Kinyori & Co. Advocates** that she has a constitutional right to bail; that she is innocent until proven guilty; that she will not interfere with witnesses; and that she will attend her trial.

3. The State opposes the application and prays that the accused be denied bail. The opposition is contained in the replying affidavit of **No. 67859 Sgt. Silas Kubai** who is the investigating officer in the case. He deposes that the applicant was the last person to be seen with the deceased before he disappeared; that the applicant was likely to interfere with witnesses; that there was strong and irrefutable evidence against the applicant; and, that it will be in the interest of justice to have the applicant detained pending trial.

4. At the hearing of the application, **Mrs.Kinyori** for the applicant submitted that the applicant was entitled to bail under **Article 49(i) h of the Constitution** and had a right to be presumed innocent until proven guilty. Counsel further submitted that there were no compelling reasons to deny the applicant bail. In response to the averments in the replying affidavit, Counsel clarified that the deceased was the husband of the accused and that some of the witnesses were their relatives. She however pointed out that since the witnesses were relatives of the deceased, there was no likelihood that she would interfere with them as she had no intention of going to live in her matrimonial home but would relocate to her mother's home.

5. In opposing the application, **Mr. Okeyo** for the State argued on the issue of possible interference with witnesses. He submitted that the witnesses D1, D2 and D4 namely George Ritho, Peter Njenga Ritho and Jane Njue Ritho were close relatives of the couple and that there was real likelihood of interference. He prayed that the accused be denied bail.

6. The constitutional basis of the application is not contested. It is common ground that the accused is entitled to bail under **Article 49(i) h** of the **Constitution** the seriousness of the charge notwithstanding. It is also common ground that an accused person enjoys the constitutional presumption of innocence until proven guilty by a competent tribunal or court. Though not canvassed by the parties, it is trite law that the right to bail under **Article 49 (i) h** of the **Constitution** is not absolute and can be curtailed by the existence of compelling reasons. See **Republic Vs Ahmad Abolatathi Mohammed Sayed Mansour Mousavi, Nairobi High Court Criminal Revision No. 373 of 2012.**

7. In opposing bail, the State set out various reasons in the replying affidavit. During the hearing however it canvassed strongly the issue of possible interference with witnesses as a compelling reason to warrant denying the accused bail. I will therefore address this one issue.

8. It was disclosed to the court by both the prosecution and the defence that the deceased and the accused were married. From the witness statements I was referred to, George Ritho and Peter Njenga Nganga are brothers of the deceased. Geroge Ritho Nganga is the son of the couple while Jane Njue Ritho and Jane Wambui Njuguna are the niece and daughter in law respectively. While it may be true that the brothers of the deceased may desire to see justice for their deceased brother, and more importantly may not be susceptible to any influence or interference by the accused who is their sister in law, the same may not be said of the other relatives particularly the children of the couple. Notwithstanding the accused's averment that she would relocate to her mother's home, I am persuaded that there is a real likelihood that she may interfere with the identified prosecution witnesses. It is settled that interference with witnesses is a compelling reason to deny an applicant bail within the meaning of **Article 49(i) h of the Constitution.**

9. In the premises, I find that there exist compelling reasons to deny the accused bail. She will be at liberty to renew her application once the key witnesses have testified.

The application is thus dismissed.

**Ruling delivered, dated and signed at Nairobi this 24th day of November, 2015**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the Accused/applicant

.....: For the State/Respondent