



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO. 12 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

WILBERFORCE KIRUI.....ACCUSED

RULING

**WILBERFORCE KIRUI** is before this court on trial for a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Pending the hearing and determination of the case the accused has now applied to be admitted to bail/bond pending trial vide the Motion dated 13th May 2014. The Motion is taken out pursuant to the provisions of **Article 49 (1)** of the **Constitution**. The Motion is supported by the affidavit of Onesmus Lang'at, the defence counsel.

It is the submission of Mr. Langat that the right to bail is enshrined in the Constitution and since there are no compelling grounds the accused should be released on bail. Miss. Kivali, learned prosecution counsel informed this court that the office of the Director of Public Prosecutions had no compelling reasons to oppose the application. The court with abundant caution called for a pre-bail Probation report on the accused. I have perused the Probation Report filed by the Probation Officer, Bureti District shows that the victim's family are still traumatised hence not ready to reconcile with that of the accused. In the report, it is indicated that both the clan of the victim and that of the accused are opposed to the accused being released on bond pending trial. The accused's family and the area assistant chief are not opposed to the accused being admitted to bail/bond.

Under **Article 49(1)** of the **Constitution**, an accused person is entitled to bail/bond pending trial and can only be denied such a right if compelling reasons are shown to exist. The constitution does specify what can be said to be compelling reasons. It was left to the discretion of the court to determine. In the statement of the offence, the particulars of the offence are that on the night of 16th and 17th March 2014 at [particulars withheld] village in Bureti District, the accused is alleged to have murdered **Faith Chepngeno Kirui**. The deceased is the accused's wife. The couple appears were blessed with three children namely **D K, D K** and **D C**. The trio are all in class 8 at [particulars withheld] Academy and are expected to do their Kenya Certificate of Primary Education exams (K.C.P.E) towards the end of this year. The accused's family are of the view that the children need their father (accused) at this critical moment of their lives. Those children are under the care of the accused's elderly father and the accused's herds boy. Apart from the protestation of the deceased's and the victim's clan, there is no other compelling reasons given to enable this court deny the accused the right to bail. I hereby order that the accused be admitted to bail/bond pending trial. I order that **Wilberforce Kirui** be released from custody upon signing a bond of Kshs.300,000 with one surety of like sum.

**Dated, Signed and delivered in open court this 20th day of June, 2014.**

.....

**J.K.SERGON**

**JUDGE**

**In the presence of:**

Miss. Kivali for Director of Public Prosecutions

Mr. Mutai holding brief for Mr. Langat for Accused