



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 31 OF 2014

SHEILA WANJIKU KIBINGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Sheila Wanjiku Kibinge** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. According to the information filed by the Director of Public Prosecutions on 22nd April, 2014, she murdered one **Leonard Kibinge Kiruri** on the night of 14th/15th April 2014 at **Gitaru Village** in **Kikuyu Sub-County** within **Kiambu County**.

When arraigned in court on 23rd April 2014, she denied the charge and was remanded in custody pending the hearing of the case which is yet to commence.

In her application dated 28th April 2014, and supported by her Affidavit sworn on the same day, she avers that she has right to bail under **Article 49(i) h of the Constitution**; that she has a right to be presumed innocent until proven guilty; that her continued detention undermines her constitutional rights to be presumed innocent; that she has no intention of interfering with witnesses. She further avers that she is 53 years old and suffers from arthritis and a back problem which requires constant specialized medical attention.

The State has opposed the application through the replying affidavit of **No. 63373 Corporal Joseph Kaunda** who is the investigating officer in the case. He says at paragraph 4 & 5 that the accused is likely to escape from the lawful custody of the court if granted bail. Owing to the likelihood of conviction and the attendant sentence of death.

At the hearing of the application on 5th June 2014, **Mr. Kongo** for the State opposed the application while relying on the replying affidavit of **Corporal Joseph Kaunda**. He underscored the seriousness of the offence and the likely sentence that the accused was likely to suffer upon conviction owing to the evidence against her. **Mr. Mbutia** for the accused discounted the averments in the replying affidavit of **Corporal Joseph Kaunda** and the submissions of prosecution counsel **Mr. Konga**. He urged the court to release the accused stating that she would attend court whenever required.

I called for a pre-bail probation officer's report in respect of the accused. The report states that the accused has been living in the United States of America and that the deceased's family is apprehensive that she may be a flight risk. I have considered the opposing affidavit and submissions as well as the detailed contents of the probation report. I find that the key issue in this application is the likelihood of the accused absconding the trial. I have also considered the submission that the accused suffers a medical

condition which requires specialized medical attention. I consider the fear of the prosecution that the accused was a flight risk to be valid given that the accused has a base in the United States of America. I however consider that bail conditions would minimize the risk of flight.

Having considered the application in its entirety I am persuaded to grant the applicant bail on the conditions that she shall:-

- i. Execute a Cash bail of Kshs.1,000,000/- with two sureties of Kshs.1,000,000/- each.
- ii. Deposit her passport and any other travel documents with the court.
- iii. Not leave the jurisdiction of this court without an order of the court.
- iv. Shall not in any manner whatsoever interfere with or communicate with witnesses in any way. Any such interference shall lead to the automatic cancellation of this bond.
- v. Attend the monthly mention of her case before the

Deputy Registrar of the Court. The first of such mention shall be on 28th August, 2014.

Any violation of the above conditions to lead to automatic cancellation of the bail.

Orders accordingly.

Ruling delivered and dated at Nairobi this 21st day of July, 2014

R. LAGAT-KORIR

JUDGE

In the presence of

.....: Court clerk

.....: Accused

.....: For accused

.....: For State