

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 93 OF 2011

REPUBLIC.....PROSECUTOR

-VERSUS -

GEORGE KARANJA.....
.....ACCUSED

R U L I N G

The accused is charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that the accused murdered one Jane Wanjiru Mwangi. When the accused was arraigned before this court, he pleaded not guilty to the charge. Pending trial, he has invoked the provisions of **Article 49(1)(h)** of the **Constitution** to be released on bail. In his application, the accused states that his right to be released on bail pending trial is constitutionally ordained. He averred that there were no compelling reasons why he should not be released on bail taking into consideration the circumstances under which he is alleged to have committed the offence. The State on its part opposed the application by the accused to be released on bail pending trial. Corporal Chrispine Boit, the investigating officer, swore a replying affidavit in opposition to the application. In the said affidavit, he deponed that the accused will likely interfere with witnesses if he is released on bail. He further swore that since the accused is facing a serious charge which if convicted will result in the accused suffering the maximum sentence available, that is, the death sentence, the accused may be tempted to abscond if he is released on bail pending trial.

At the hearing of the application, this court heard oral rival submissions made by Mr. Njau for the accused and by Mr. Imbali for the State. This court has carefully considered the said rival arguments. **Article 49(1)(h)** of the **Constitution** provides that any arrested person has the right “*to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released*”. There are other principles which this court must take into consideration in determining whether or not the accused should be released on bail pending trial. The main principle is that the court should have the assurance that the accused will attend court during trial. The right of an accused person to be released on bail pending trial is not absolute but is dependent on whether or not there are compelling reasons for the court not to release such accused person on bail pending trial. In the present application, the State opposes to the application by the accused being released on bail on the grounds that he is likely to interfere with witnesses if he is released on bail. The State has further opposed the accused being released on bail because it is of the view that taking into consideration the nature of the charge the accused is facing, he is likely to abscond.

Are the reasons put forward by the State compelling enough to persuade this court to deny the accused his constitutional right to be released on bail pending trial? The circumstance under which the accused was arrested has persuaded this court that the accused will not be a flight risk if he is released on bail pending trial. The accused was arrested lying on the same bed with the deceased. The accused claims that he was drunk. From the statements of some of the witnesses, it appears that the deceased was drunk prior to being found on the same bed with the accused. That is a matter which will be comprehensively dealt with during trial. The State did not place any cogent evidence before this court to support its claim that the accused will likely interfere with the witnesses or abscond if he is released on bail pending trial. The State did not place any evidence regarding the accused prior behaviour that would point to the fear by the State

that the accused will abscond if he is released on bail pending trial.

In the premises therefore, the application by the accused to be released on bail pending trial has merit. It is allowed. The accused is released on bail pending trial on the following terms:

- (i) The accused shall deposit a cash bail of KShs.500,000/=.
- (ii) He shall provide two sureties of a similar amount i.e. KShs.500,000/=. The two sureties shall be approved by the Deputy Registrar of this court.
- (iii) The accused shall appear before the Deputy Registrar for mention of the case once every month until the hearing and conclusion of the case.

It is so ordered.

DATED at NAIROBI this 8TH day of FEBRUARY 2012.

L. KIMARU
JUDGE