



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

Criminal Case 55 of 2012

REPUBLIC.....APPLICANT

VERSUS

GRACE NYAMBURA KIBUI.....RESPONDENT

RULING

The accused, Grace Nyambura faces a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. She has applied to be released on bond pending the trial.

Mr. Cheche, counsel for the accused, urged the court to release the accused on bond because she presented herself to the police after the offence was committed, has a 9 months old baby and is unlikely to abscond. Counsel also argued that there are no compelling reasons to warrant the denial of bond to the accused.

In opposing the application, Cpl Paul Seda, the Investigating Officer and Veronica Kamotho, Assistant Chief, Njoro Milimani Sub Location, Njoro swore affidavits. Veronica deponed that the accused hails from her Sublocation and she knows her very well and that after the commission of the offence, the accused went into hiding till she presented herself to the police. Efforts to trace her during that period was fruitless. Cpl Seda deponed that after the offence was committed the accused went into hiding and he received information that she had applied for a passport and intended to flee the country and is therefore likely to abscond if released on bond.

The deceased is said to have been murdered on 9/6/2012 and the accused is said to have gone into hiding till she presented herself to the police. I believe that she must have presented herself about 24/7/2012, because that is the date she was presented to court. It means that she disappeared for about 1½ months.

Under **Article 49 1(b)** of the **Constitution**, bond can only be denied a person if there are compelling reasons. Cpl Seda alleges that the applicant was trying to flee the country but they sent a signal to the Immigration Department and Airport which frustrated her efforts. If indeed the applicant ever applied for a passport or did anything towards fleeing the country, the Investigating Officer should have presented that evidence to the court. He did not.

The fact that the applicant fled after the incident does militate against her being granted bond. It may be that she indeed tried to flee but failed. However, it must be credited to her that she presented herself to the police thereafter. I do also take into account the fact that she has a young baby aged less than a year. The Assistant Chief did not point to any negative traits in the applicant's character before the incident. I find no serious compelling reason adduced to deny the applicant bond. I grant the application and the applicant may be released on her own bond of Kshs.300,000/- with 2 sureties of like sum. When approving bond,

the sureties and applicant should avail their passport photographs to the court; the applicant to report to Njoro Police Station once a week till further orders of this court. The applicant is expected to attend court as and when required; she should be of good conduct when on bond and should not interfere with the witnesses. In the event of any breach of one of the above conditions, the bond will be cancelled. It is so ordered.

DATED and DELIVERED this 31st day of July, 2012.

R.P.V. WENDOH
JUDGE

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PRESENT:

Mr. Cheche for the applicant

Mr. Omari for the State

Accused - present

Kennedy – Court Clerk