



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 20 OF 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOYCE KATHAMBI SOLOMON.....1<sup>ST</sup>  
ACCUSED**

**SAMSON MUIGAI NGURU.....2<sup>ND</sup>  
ACCUSED**

**DAVID NJENGA KAHIU.....3<sup>RD</sup> ACCUSED**

**RULING**

David Njenga Kahiu, Joyce Kathambi Solomon and Samson Muigai Nguru are jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. They are alleged to have murdered Peter Njogu Gachangi on the night of 6<sup>th</sup> and 7<sup>th</sup> February 2010. They denied the offence and have been remanded in custody.

On 21/2/2011, Mr. Mongeri Advocate, counsel for the 3<sup>rd</sup> accused/applicant filed a chamber Summons pursuant to **Art. 49** of the **Constitution** seeking to have the applicant released on bond/bail pending trial. The grounds upon which the application is brought are found on the face of the application and the supporting affidavit of the applicant sworn on 21/2/2011. He depones that he is a married man with 3 children aged between 24 years and 14 years, he is the sole breadwinner as he used to work as a Truck Driver with Swift Royal Conveyors Ltd, his father is willing to stand surety for him, he will not interfere with witnesses. Mr. Mongare relied on the case of **REP V. DANSON MGUNYA CR 26/08** where J. Ibrahim released an accused person charged with murder on bail contending that all that the applicant had to show was that he will attend court when required to do so. He submitted that no evidence has been adduced to show that the applicant will abscond or likely to interfere with witnesses.

Mr. Nyakundi, learned State Counsel, opposed the application for reasons that the evidence so far tendered incriminates the applicant, he will be tempted to abscond, the offence is serious and he is also likely to interfere with witnesses.

**Art. 49(2)** of the **Constitution** gives the court discretion to grant bail in all cases where an accused is charged with an offence punishable by fine alone or imprisonment for a period not exceeding 6 months. These may be referred to as the party loses. However, under **Art. 49(1) (h)** the right to bail is not absolute. Bail may be denied where there are compelling reasons not to grant bail. The said compelling reasons are not provided for anywhere but the courts have made decisions setting out what they believe to

be compelling reasons. The court the creteria in **REP V MGUNYA MSA CR 26/08** and **NKU CR 115/08, REPUBLIC V KABULIT**.

This is a serious case of murder which carries a sentence of death upon conviction. This matter is partly heard with 5 witnesses having testified and the 6<sup>th</sup> stood down for want of time. Though Mr. Nyakundi submitted that there is already evidence incriminating the applicant and he is likely to abscond, that is not the position. Even though that could be one of the grounds to be considered, the applicant is still presumed to be innocent till proven otherwise.

Though the applicant did not disclose where he resides, he has demonstrated that he is a family man with a wife and children, his father is ready and willing to stand surety for him. As pointed out earlier, the prosecution has not demonstrated that the applicant is likely to interfere with witnesses. I find that there are no compelling reasons to deny the applicant bail and I hereby grant the application.

The applicant be released on bond of Kshs.500,000/- with 2 sureties of like sum. The applicant is warned not to interfere with any of the witnesses. He will attend court every 14 days for mention until further orders of this court.

**DATED and DELIVERED this 13<sup>th</sup> day of April 2011.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Accused/applicant present – in person.

Nyakundi for the State.

Kennedy – Court Clerk.