

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 36 OF 2010

**EDWARD KIGIRA GACHUERE.....APPLICANT/
ACCUSED**

VERSUS

**REPUBLIC.....RESPONDE
NT**

RULING

The Applicant herein, **Edward Kigira Gachuere**, is before this court to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code, as set out on the information of the Honourable Attorney General dated 17th October 2010. The particulars of the offence are that on the 30th day of September 2010 at Gakindu location, Mukurweini Division, within Nyeri, the accused murdered Stephen Ngatia Kariamburi. The Applicant pleaded not guilty to the offence and was remanded in custody pending trial.

The Applicant has now taken out the Motion dated 10th February 2011 in which he applied to be released on bond/bail pending trial pursuant to the provisions of *Article 49 (1) (h)* of the Constitution. The Applicant has sworn an affidavit in support of the Motion. The Honourable Attorney General did not file any affidavit to controvert the facts deponed in the Applicant's supporting affidavit. Mr. Makura, learned Senior State Counsel, was however, allowed to make oral submissions in opposing the Motion. It is the submission of Mr. Mugambi, learned advocate for Applicant that the accused should be admitted to bail pending trial on the basis that it is his constitutional right. Mr. Mugambi further pointed out that the accused is a person who is ailing with high blood pressure hence he should be released on bail since there are no compelling reasons to justify him being kept in prison custody. Mr. Makura, argued that the Applicant should be denied bail because the Applicant may abscond from attending court since the offence he is facing is serious.

I have considered the grounds set out on the face of the Motion and the facts deponed in the supporting affidavit. I have further considered the rival oral submissions made by learned counsels from both sides. The Applicant has beseeched this court to release him on bond/bail pending trial. That right is guaranteed by the Constitution under *Article 49(1) (h)*. The same provision also gave the court the discretion to deny an accused bail/bond if compelling reasons are presented to court. The prosecution is enjoined to present to court the compelling reasons why bond/bail should be denied. In the case before

court, the prosecution was served with the Motion plus the supporting affidavit but the Honourable Attorney General chose not to file any affidavit to controvert the facts deponed in supporting affidavit. The Honourable Attorney General also failed to give compelling reasons apart from the allegations made from the bar that the accused person is likely to abscond. I have considered the averments made in the supporting affidavit. There is no dispute that the Applicant is an ailing man. He has pledged to comply with all the conditions attached to the bond. Since there are no compelling reasons given to enable me deny the accused bond, there is no reason why the Applicant should not be released on bail. I hereby admit the accused to bond/bail. Consequently the Applicant herein should be released upon signing a personal bond of Ksh.300,000/= with one surety of like sum before the Deputy Registrar of this court.

Dated and delivered at Nyeri this 27th day of May 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Ng'ang'a holding brief Mugambi for Applicant and Makura for the State.