

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MURDER CASE NO. 36 OF 2010

REPUBLIC.....PROSECUTION

VERSUS

CAROLINE WANDERI MUMO.....ACCUSED

R U L I N G

The Accused was charged with murder contrary to Sections 203 and 204 of the Penal Code whose particulars are that on 14th October 2010 at Kanjarara village in Kirinyaga County within Central Province she murdered Stephen Mumo Kibathi. She denied the charge and her trial will be on 10th October this year. She asks to be released on bail pending the hearing and determination of her case. The application was made on her behalf by Mr. Nduku. Ms. Matiru appeared for the State and did not oppose the application. She informed the court that the deceased was the husband of the accused and that the two had a domestic quarrel that resulted into the death. She indicated that there were discussions going on to have the charge reduced to manslaughter.

In the affidavit sworn by the accused's counsel in support of the application, it was indicated the accused was left with two children, aged 15 and 8, respectively, who are now destitute and out of school owing to this incarceration.

The application was brought under Section 357(1) of the Criminal Procedure Code and Article 49(1) (h) of the Constitution. Section 357(1) of the Criminal Procedure Code is in relation to bail pending appeal and is therefore not relevant to this application. The accused is, however, entitled to be released on bail under Article 49(1) (h) of the Constitution of Kenya, 2010 unless there are compelling reasons not to be released. Such reasons would usually come from the prosecution which has preferred the charge. In this case no reason has been given, and in fact the State counsel has joined in the quest to have the accused released on bail.

I allow the application. Given the gravity of the charge, I ask that the accused signs a bond of KShs.500,000/= and to provide one surety in similar amount.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF JULY 2011.

**A.O. MUCHELULE
JUDGE**