



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 25 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

SUSAN WANGARI GITAHU.....ACCUSED

RULING

This ruling is the outcome of the Notice of Motion dated 9th March 2011 in which **Susan Wangari Gitahi**, the applicant herein, seeks to be released on bond/bail pending trial under *Article 49 (1) (h)* of the Constitution. The Motion is supported by the affidavit of the Applicant. The same is opposed by the Republic which filed the affidavit of Samuel Gikandi and that of Maurice Odhiambo.

Susan Wangari Gitahi is before this court on the information of the Honourable Attorney General dated 29th July 2010 to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on 23rd day of October 2009, at Gaturia, sub-location in Mukurweini District within Central Province murdered Linet Wangari Gikandi.

I have considered the rival submissions. Under *Article 49 (1) (h)* of the Constitution, the accused person is entitled to be released on bond pending trial unless there are compelling reasons shown to deny her bail. According to the averments contained in the affidavit of Maurice Odhiambo, the Investigating Officer, the applicant should not be released on bond because she may not turn up for the hearing of her case. It is also alluded that the Applicant may interfere with witnesses. One of those witnesses has sworn an affidavit claiming he has received threats from Muturi Ruchuiya to the effect that unless the Applicant is released he would face dire consequences.

In a nutshell, the Republic has simply put forward two main grounds which it thinks are compelling enough to deny the applicant bail. The first is that the applicant may move out of the jurisdiction of this court by failing to turn up in court. Secondly, that there is likelihood that she will interfere with witnesses. I have anxiously considered the aforesaid grounds. Let me start from the second ground. The

basis of this ground is the affidavit of Samuel Gikandi, who is the father of the deceased. This witness has deponed in his affidavit that he has received threats from one Muturi Ruchuiya. On my part I do not think this ground can stand for three main reasons. First, it is a matter of common knowledge that the victim's relatives would not wish to have the assailant of their beloved person to be released from custody. This is more so if they are close family members like the father, mother, sister and or brother. Secondly, the person who issued the threats is well known and I expected the Police to have taken the necessary steps to ensure that such a person is brought to book. Thirdly, that there is no cogent evidence that the Applicant was directly or indirectly involved in issuing the threats.

The first ground was to the effect that the Applicant is likely to abscond. Apart from the averments contained in the affidavit of Maurice Odhiambo, there is no cogent evidence to show that the accused will abscond. In any case the court, in admitting such persons to bail, will put in place measures to ensure that an accused person does not abscond by binding herself or himself together with the sureties.

In the end I am convinced there are no compelling reasons shown to deny the Applicant bail. Consequently I find the Motion dated 9th March 2011 to be well founded. I hereby admit Susan Wangari Gitahi to bail/bond pending trial. She should be released upon signing a bond of Ksh.500,000/= with two sureties of like sum.

Dated and delivered at Nyeri this 8th day of July 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Nganga holding brief Kimunya for the Accused. Ngalyuka for the State.