



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 69 OF 2011**

REPUBLIC.....PROSECUTOR

VERSUS

MARY NJOKI NDIRANGU.....1<sup>ST</sup> ACCUSED  
GADISON MWANGI KAMAU.....2<sup>ND</sup> ACCUSED  
CHARLES MUNGA GICHUI.....3<sup>RD</sup> ACCUSED  
ZAKAYO GITHINJI RANGATA.....4<sup>TH</sup> ACCUSED  
PETER MAINA.....5<sup>TH</sup> ACCUSED

**RULING**

The five accused persons namely; **Mary Njoki Ndirangu, Gadison Mwangi Kamau, Charles Munga Gichui, Zakayo Githinji Rangata** and **Peter Maina** are jointly charged with 7 counts of murder, contrary to **Section 203**, as read with **Section 204** of the **Penal Code**. On 5/10/2011 Mr. Mongeri, counsel for 1<sup>st</sup> Accused/Applicant, Mr. Karanja for 2<sup>nd</sup> and 3<sup>rd</sup> Accused/Applicant and Mr. Ndungu for the 4<sup>th</sup> and 5<sup>th</sup> Accused/Applicants applied that the court be pleased to release the accused persons on bail pending the hearing of their cases.

Mr. Mongeri submitted that the offence is bailable and that the contents of the replying affidavit sworn by Inspector Paul Muita were hearsay as there is no evidence that the 1<sup>st</sup> applicant will interfere with witnesses; that since the 1<sup>st</sup> applicant was arrested, there have been no witness statements availed and it is unknown who will be interfered with. It was denied that the 1<sup>st</sup> applicant will interfere with people who are yet to be charged and the allegation that relatives of the deceased are still in mourning is not a good ground for denial of bond. He urged that 1<sup>st</sup> accused is an elderly person and will not abscond.

For the 2<sup>nd</sup> and 3<sup>rd</sup> applicants, Mr. Karanja submitted that the allegation that the applicants will resume making alcohol is no good reason to deny them bond as the practice is always ongoing whether the applicants are in remand or free. He also observed that the witnesses are not yet named so how will the applicants interfere with them? Counsel also urged that there is no evidence that there are more victims who are still in hospital. Counsel submitted that it is upto the state to discharge the burden that it is unsafe to release the applicants on bond. He also urged that the two applicants reported to the Police Station once they learnt that they were required by police.

In respect to 4<sup>th</sup> and 5<sup>th</sup> applicants, Mr. Ndungu submitted that the two hail from Kinangop, over 200

kilometers from the scene of the offence and are unlikely to be harmed; that they are people with fixed abode and the replying affidavit does not raise any ground for denial of bond.

Mr. Nyakundi, relying on the replying affidavit of IP Paul Muita submitted that if released the applicants are likely to continue with the business that gave rise to the deaths; that they are likely to manipulate the witnesses some of whom are still in hospital in critical condition; that the families of the deceased are still in mourning and that it is unsafe to release the applicants; that some people are still in critical condition and additional charges are likely to be preferred and that some suspects are still at large and that the applicants are likely to manipulate the witnesses and abscond.

**Under Article 49(1)(h)** of the Constitution, one can only be denied bond if there are compelling reasons to do so. Some of the considerations to take into account when considering whether or not to release a person on bond, were captured in the Nigerian case of **ALHAJI MUJAHID DUKUBO ASARI V FEDERAL REPUBLIC OF NIGERIA SC 208/06**. The same were considered by J. Ibrahim in **REP. V DANSON MGUNYA (MSA) Cr. 26/08**. The criteria include:-

- “(i) The nature of the charges;**
- (ii) The strength of the evidence which supports the charge;**
- (iii) The gravity of the punishment in the event of conviction;**
- (iv) The previous criminal record of the applicant;**
- (v) The probability that the criminal may not present or surrender himself for trial;**
- (vi) The likelihood of further charges being brought against accused;**
- (vii) The likelihood of accused interfering with witnesses or may suppress any evidence that may incriminate him;**
- (viii) The probability of finding the applicant guilty as charged;**
- (ix) The detention for the protection of the accused;**
- (x) The necessity to preserve medical or social report pending final disposal of the case.”**

The accused persons face 7 counts of murder. If found guilty they are likely to be sentenced to death. The charges are serious indeed. Though the prosecution urge that the applicants are likely to interfere with witnesses, it has been denied that any witnesses' statements are availed and the witnesses are unknown. There is not sufficient reason for the fear that witnesses are likely to be interfered with or manipulated. Mr. Nyakundi also urged that there are other victims who are still admitted and other suspects at large. No names were given. The other ground is that the applicants are likely to continue with the business they have been carrying on, the cause of the deaths herein. Whether or not the applicants are released, sale of illicit brew still continues. Even with their arrest the business has been thriving. That is not ground for denial of bond.

It was urged that the 2<sup>nd</sup> and 3<sup>rd</sup> applicants presented themselves to the police on learning that they were wanted by police. The applicants are said to have fixed abode. There is no evidence to support the allegation that the applicants are a flight risk. There is also no evidence that their lives will be in danger if released. They have been in remand since mid September 2011. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are said to reside in Kinangop about 200 kilometers away from the place where the deaths occurred. The most important consideration is that the applicants attend trial. I find no serious grounds presented to court to warrant the denial of bond.

This court therefore allows the applicants' application and it is ordered that each applicant will be released on bond of Kshs. 1 million plus one surety of like sum. Each applicant shall:-

- (1) **Be of good conduct during the pendency of the trial;**
- (2) **Not interfere with witnesses;**
- (3) **Report to the relevant Police Station every week till further notice i.e. DCIO Nyandarua North;**
- (4) **In default of any of the above, the bond terms will be recalled and cancelled.**

It is so ordered. These orders do apply in HCRC No. 68/2011, where the 2<sup>nd</sup> and 3<sup>rd</sup> accused are also charged and the counsel are the same. Mention on 17/11/2011.

**DATED and DELIVERED this 14<sup>th</sup> day of October, 2011.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mr. Nyakundi for the State.

Mr. Mongeri for the 1<sup>st</sup> Accused.

Mr. Karanja for the 2<sup>nd</sup> and 3<sup>rd</sup> Accused.

Mr. Mongeri holding brief for Mr. Ndungu for 4<sup>th</sup> and 5<sup>th</sup> Accused.