



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NANYUKI

CRIMINAL CASE NO 2 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES MURERWA GITUMA.....ACCUSED

RULING ON BAIL

1. The Accused in this case, **CHARLES MURERWA GITUMA**, pleaded not guilty to the charge of **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the particulars of offence in the information that in the night of 18th January, 2019 at Kariokor Market in Kiamathaga Sub-location of Kieni East Sub-county within Nyeri County, he murdered one **CYPRIAN GITONGA GIRIGIA**.

2. The Accused has asserted his constitutional right to bail pending his trial. The Republic has opposed upon grounds that he is a flight risk as he has no known permanent residence; that he is likely to interfere with prosecution witnesses; and that there is danger of harm to him from members of the public if released.

3. I have read the affidavit by the investigating officer of the case, Sgt Hussein Liga, opposing bail filed in court on 25/03/2019 as well as that of the Accused filed on 13/05/2019. I have also considered the submissions of the learned counsels appearing.

4. Bail pending trial is now a constitutional right that will be denied only for compelling reason. Further, any condition that the court might impose for such bail, again by constitutional edict, must be reasonable. For all this see **Article 49(1) (h)** of the **Constitution of Kenya, 2010**.

Flight risk

5. It has been urged by the Republic that the Accused has no known permanent residence, that he lives in a rental house at Kariokor in Kieni East Sub-county, and that he has no known permanent employment. For these reasons, it is submitted, it would be difficult to trace him if he were to jump bail. The Accused has responded in his affidavit that indeed he has a permanent house in Sirimon where he resides with his family, and that the rental house was only for storing his potatoes after harvest from Mwichwiri Forest land where he farms. He has also stated that he is the Chairman of the farmers group at Mwichwiri Forest with the duty of ensuring that the farmers do not cut down the forest trees.

6. The Accused has also pointed out that he actually took himself to **Naromoru Police Station** and there presented himself after learning that the police were looking for him. He has thus strongly denied that he is a flight risk.

Interference with prosecution witnesses

7. On this issue the investigating officer has stated only this –

“The Accused person is likely to interfere with witnesses, some (of whom) are close relatives hence well known to him.”

8. To this the Accused has responded that the only witness he knows is one Lawrence Mwirigi Gitonga, who is his cousin.

9. A mere allegation of a likelihood of interference with witnesses is not enough. There must be laid out an evidential basis for such allegation. Whether or not a compelling reason has been established sufficient to deny an accused person his constitutional right to bail is a matter of judgment; it is not a matter for the court's discretion.

Danger to the accused

10. It is stated in the affidavit opposing bail that the Accused, if admitted to bail, is likely to be harmed by members of the public who are “still very angry at the Accused person for murdering his (sic) uncle...” Not a single member of this public has sworn an affidavit regarding the community’s anger at the Accused.

11. The Accused himself has pointed out in his affidavit that he ordinarily resides some forty (40) kilometers away from where the alleged offence was committed.

12. Having considered all matters placed before the court, I am not persuaded that there is any compelling reason to deny the Accused person his constitutional right to bail. He shall be admitted to bail upon his own cognizance in the sum of KShs 500,000/00 and one surety in like sum. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JULY 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 18TH DAY OF JULY 2019