



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL MURDER NO. 18 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

GIDEON MISHECK KARANJA.....ACCUSED

RULING

1. The accused person in this case **Gideon Misheck Karanja** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The accused was charged before Hon. Justice Limo on 5th December, 2016 and he pleaded not guilty to the charge.

2. By an application dated 5th December, 2016 brought under **Article 49 and 51** of the **Constitution** the accused applied to be released on bond or bail pending hearing of the case. He also seeks a declaration that he is entitled to his constitutional right as enshrined under **Article 49(1) (h)** of the **Constitution**.

3. The application is based on the grounds that he is entitled to bail under **Article 49 and 51** of the **Constitution**. That he has a fixed abode as he has a permanent home within the jurisdiction of this Court and will not abscond. Further that he will not interfere with investigations and is desirous to have the case heard and determined in order to clear his name. That there are no peculiar circumstances to bar him from being released on bail.

4. The State did not oppose the application. The prosecuting counsel Mr. Sitati urged the court in view of the nature of the charge, stiff terms be imposed.

5. I have considered the application. Under **Article 49 (1) (h)** of the **Constitution** bail pending trial is a constitutional right which should not be denied unless there are compelling reasons not to be released. It is provided:

“An arrested person has the right –

To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

6. The offence which the accused is charged with is bailable.

7. The State has not opposed the application. There is therefore no compelling reason to deny the accused person bail.

8. The accused relied on the case of **R -V- Serah Wakarima H.C. Cr. C. No. 62/08.**

“Admittedly, admission to bail is a constitutional right of an accused person.....

Even without the constitutional provision, generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail.”

9. Where there are no compelling reasons and the State does not oppose the application, the accused person should be allowed to enjoy the Constitutional right to bail.

10. The principles have been stated in a number of cases and in the case of **R -V- Hillary Mugo Mwendia and 2 others Cr. Case No. 7/2012 High Court Kerugoya where the case of Nganga -Vs- Republic (1985) KLR 451 and Marui -V- Republic 1985 KLR 279** were cited. It was held that;

“Generally and because of the presumption of innocence an accused person should be granted bail unless it is shown by the prosecution that there are substantial grounds to believing that;

(a) The accused will fail to turn up at his trial or to surrender to custody, or (b) the accused may commit further offences or (c) he will distract the cause of justice and (d) the accused would cause more by absconding.”

11. None of these grounds was shown by the prosecution as bail was not opposed. I have considered the fact that the offence is serious as urged by the State, however, where bail is not opposed this can only come in when the court is exercising discretion to set the bail terms.

12. The application for bail has merits. I allow it. The accused shall be released on a bond of Ksh.1,000,000/- plus two sureties of like amount.

Dated and delivered at Kerugoya this 17th day of March, 2017.

L. W. GITARI

JUDGE

17.3.2017

Coram: L. W. Gitari J.,

M/S Muthoni State Counsel for State

M/S Magara for Accused

Accused

Court Assistant Naomi

ORDER: The ruling has been read out in open court.

L. W. GITARI

JUDGE

17.3.2017