



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL MURDER NO. 7 OF 2015

REPUBLIC.....PROSECUTOR

-VERSUS-

HARRISON KINYUA MAGU.....ACCUSED

RULING

1. The accused person in this case **Harrison Kinyua Magu** was on 9th April, 2015 charged before Hon. Justice Limo with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. A medical report by Doctor Thuo J. N., Consultant Psychiatrist Embu Provincial Hospital which was presented in Court on that date indicated that the accused was not mentally fit to stand trial.

The judge ordered that the accused be escorted to Mathari Mental Hospital for treatment and further evaluation.

2. Later on 21st October, 2015 the Court was informed that the accused had been treated and was fit to stand trial. A report was presented in Court from Mathari Mental Hospital by Dr. Wamukhoma confirming that the accused had become capable of making his defence.

3. The charge was read to the accused on 21st October, 2015 and he pleaded not guilty to the charge. The matter was listed for hearing.

4. The accused then filed an application by way of Notice of Motion under **Article 49(1)(h)** and **Article - 2-** of the **Constitution of Kenya** seeking orders that he be released on bail or in the alternative be released on bond with surety pending hearing and determination of the case. The application is based on the grounds that the accused has constitutional right to bail pending trial and that he is presumed innocent unless or until proven guilty. According to him he is a businessman in Kerugoya town within Kirinyaga County. That he did not commit the offence and therefore pleads innocence. Further that there are no compelling reasons to render him unsuitable for bail.

The State did not oppose the application.

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

Accused present

Mr. Magee holding brief for Mr. Ndana

ORDER: Ruling read out in open court.

L. W. GITARI

JUDGE

17.3.2017